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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 293

EDWARD LAUF AND AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL No. 73, PETITIONERS,

vs.

E. G. SHINNER & COMPANY, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 7, 1937.

CERTIORARI GRANTED OCTOBER 11, 1937.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

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EDWARD LAUF AND AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL No. 73, PETITIONERS,

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

INDEX.

	Page
Record from D. C. U. S., Eastern Wisconsin	1
Placita	1
Reference to record on former appeal being made a part of this record	1
Statement of evidence	2
Caption	2
Stipulation re testimony on former appeal	2
Testimony of Louis Gusich	2
Alois Tauske	3
Order approving statement of evidence	5
Findings of fact and conclusions of law	6
Decree dismissing cross-complaint of defendant, and that permanent injunction issue	9
Writ of permanent injunction	10
Assignment of errors	12
Petition for appeal	15
Order allowing appeal	16
Bond on appeal	17
Præcipe for record	18
Certificate of clerk	19
Citation and service	20
Stipulation and order that transcript in appeal No. 5551 be made a part of the record on this appeal	21

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	Page
Proceedings in U. S. C. C. A., Seventh Circuit	22
Caption	22
Stipulation and order that transcript in appeal No. 5551 be made a part of the record on this appeal without reprinting	22
Appearances of counsel	23
Minute entry of hearing	25
Opinion, Sparks, J.	25
Judgment	26
Clerk's certificate	27

	Original	Print
Record from D. C. U. S., Eastern Wisconsin, on former appeal (No. 5551)	1	29
Placita (omitted in printing)	1	
Bill of complaint	1	29
Subpœna in equity	5	33
Marshal's return	6	33
Notice of motion for preliminary injunction	7	34
Notice of adjournment	8	35
Answer and cross-complaint	8	36
Statement of evidence	12	39
Caption	12	39
Testimony of E. G. Shinner	13	40
Archie H. Russell	15	42
Anna Miller	20	47
Edward J. Wentz	21	48
Gustave A. Hahn	22	49
Anthony J. Sokolowski	22	49
Benedict J. Kosnicki	25	53
Frank Szablewski	28	56
Ole J. Sadowski	30	58
Edward Lauf	31	59
Joseph H. Heller	35	63
Steve Zurowski	36	64
Ludwig Svoboda	36	64
Order approving statement of evidence	37	65
Findings of fact and conclusions of law	38	66
Bond as security for injunction pendente lite (omitted in printing)	40	
Order for writ of injunction pendente lite	42	68
Writ of injunction pendente lite	43	69
Petition for appeal	45	72
Assignment of errors	45	72
Order allowing appeal	49	77
Bond on appeal (omitted in printing)	50	
Stipulations and orders extending time for filing record	51	78
Præcipe for record	53	79
Certificate of clerk (omitted in printing)	54	
Citation and service (omitted in printing)	54	
Clerk's certificate (omitted in printing)	56	
Order allowing certiorari	57	80

DISTRICT COURT OF THE UNITED STATES, Placita.

For the Eastern District of Wisconsin.

United States of America, }
Eastern District of Wisconsin. } ss.

At a stated term of the District Court of the United States of America, for the Eastern District of Wisconsin, begun and held at the city of Milwaukee, in said district, on the first Monday, (being the 5th day) of October, A. D. 1936, present the Honorable Ferdinand A. Geiger, District Judge, presiding:

Among other the following proceedings were had, to-wit:

E. G. Shinner & Co., Inc.,
vs.
Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local #73, the names of the members thereof being unknown to the plaintiffs. } In Equity

Be it remembered that heretofore, to-wit: on the 11th day of April, 1935, came the plaintiff and filed its Bill of Complaint against the defendants as contained in transcript of record of former appeal in Cause No. 5551, and which transcript of record in the former appeal taken in said cause is made a part of this record pursuant to stipulation dated January 18, 1937 and filed in the U. S. Circuit Court of Appeals for the Seventh Judicial Circuit.

ment of
dence,
Jan.
1937.

11 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—4593) • •

STATEMENT OF EVIDENCE.

The following is a statement of the additional evidence produced at the trial of this case before the Honorable Ferdinand A. Geiger, on the 13th day of October, 1936, insofar as the evidence is essential to the decision of the questions presented by this appeal.

Appearances:

Messrs. Gold & McCann, represented by Walter Gold, Esq., and

Ray T. McCann, Esq., appearing for Plaintiff;

A. W. Richter, Esq., appearing for the Defendants.

It was stipulated that the testimony taken upon the hearing for the preliminary injunction should be considered as testimony upon the trial and should be considered by the court as such. Such testimony is found in the printed transcript of record in the former appeal taken in this cause entitled:

Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local #73,
Appellant,
vs.
E. G. Shinner & Co., Inc.,
Appellee.
} No. 5551.

LOUIS GUSICH, a witness on behalf of defendants, testified as follows:

Direct Examination.

My name is Louis Gusich. I live at 309 W. National Avenue, and am a butcher by occupation. I worked for Shinner & Co., three years ago steady for three or four weeks,
12 and was a member of defendant union Local 73, and have been a member all the time and am now. I also worked for Shinner & Co., during the winter of last year, three days

a week. I was then a member of defendant union. No one there or any member of the firm, nor officers of the Shinner & Co., ever talked to me about this union. Sometimes they asked me if I belonged to the union and I said, yes. I asked for a steady job with Shinner. I talked to Mike Dropp manager of all the markets about getting a steady job. He said, no, you belong to the union, I can't hire you. Before that he had asked me about belonging to the union. I had no conversation with him about the shop union of Shinner & Co., and no officials asked me to join it. That is all the conversation I had with him. I quit because they would not give me more work.

Cross-Examination.

I quit along in the winter-time, couldn't say what month in 1936. I started working as an extra for Shinner after Christmas in 1935. I was not an employee of Shinner up to Christmas in 1935. I can't remember when I had the first job with Shinner. I worked there three days a week. I quit a long time after I had the conversation with Mike Dropp. I quit because I got a steady job at Neumanns. All I could get from Shinner was three days a week, the busy days in the meat markets. When I worked at Shinner's store after I had the talk with Mike Dropp, I don't know. The reason I left was because I got steady employment.

ALOIS TANSKE, witness on behalf of defendants, testified, as follows:

My name is Alois Tanske. I live on Hopkins road and am a member of defendant Local 73. I was not employed by Shinner. I was never at any time employed by Shinner. Last July I asked for the foreman in the Mitchell Street Store and asked him for work. One of the foreman came up and asked me if I belonged to the union.

Mr. McCann: That is objected to as incompetent, immaterial and hearsay.

A. (Continuing) And I says, "Yes."

The Court: Just a moment. To whom did he talk?

A. With the foreman.

Mr. Richter: Q. Do you know his name?

A. No.
13 Q. Is he here?
A. I don't see him.
Q. You did not ask him his name?
A. No.
Q. How do you know he was a foreman?
A. I asked for the foreman and one of the boys called him, so he says—

Mr. McCann: I object to it as incompetent and immaterial.

The Court: Objection is sustained. I don't know that it makes any difference,—last July he had a talk with somebody there, is about as far as he can go.

The Court: What does it mean to say that he asked the foreman of the shop? I don't know whether the foreman had authority to hire men, or anything of that kind, or whether he was foreman of the butcher shop routine.

Mr. McCann: That is objected to as incompetent and immaterial, and for the further reason it is long after the commencement of this action.

The Court: Last July; that is what I mean, long after the action was commenced.

Mr. Richter: This is during the pendency of the action.

The Court: That is all right; the action was determined at the time of its commencement.

Mr. Richter: The controversy is on during the entire time of the pendency.

The Court: No, I don't think so. The controversy is determined as of the time of the commencement of this action. There is no change in the pleadings here?

Mr. Richter: No, there is no change in the pleadings, but the pleadings themselves state the—

The Court: I know, but they set it forth as of the time of the commencement of the action.

Mr. Richter: But it is purely continuation in the strict sense of the word, or the major controversy at the time of the pleading.

14 The Court: The objection is sustained on that ground.

Mr. Richter: That is all we have except the witness whom we would like to call, who would testify that he was discharged because of union activity, because of membership in the defendant local union.

The Court: Well, the witness is in the hospital?

Mr. Richter: He is in the hospital at Rochester, Minnesota, and he will be back here next week. We thought he

would be back here; he telephone last night and said he thought he would be in Milwaukee by Monday.

The Court: What is the name of the witness?

Mr. Richter: Rudolph Alterman.

The Court: Was he a witness on the former hearing?

Mr. Richter: He was not.

Mr. McCann: He was still in the employ at that time, and of course we deny the reason for discharging him was that he was a member of the union, but it is admitted that he was in the employ at the last hearing, so whatever he intends to prove is something that occurred long after the case was heard here before, long after the case came back from the Circuit Court of Appeals, so how could that affect the issues?

Mr. Richter: We contend that this controversy was going on all the time. We can show that negotiations have been going on. In the meantime, if there is a labor controversy, then it was still in existence and is now.

The Court: Well, the plaintiff may take judgment.

It Is Hereby Stipulated And Agreed that the above and foregoing shall constitute the written statement of evidence in the above entitled action to be used in the record on appeal to the Circuit Court of Appeals.

Dated, this 27 day of January, 1937.

W. L. GOLD,
RAY T. MCCANN,
Attorneys for Complainant.
A. W. RICHTER,
Attorney for Defendants.

Approved this 30th day of January, 1937. Approval of Judge.

F. A. GEIGER,
District Judge.

15 (Endorsed) In the District Court of the United States. • • (Caption 4593) • • Additional Statement of Evidence of Appeal. A. W. Richter, Attorney for Defendants. Filed Jan 30 1937. B. H. Westfahl, Clerk.

2 Oct. 13, 1936—Findings of Fact & Conclusions of Law, filed as follows:

d Oct. 12, 936.

IN THE DISTRICT COURT OF THE UNITED STATES.

For the Eastern District of Wisconsin.

E. G. Shinner & Company, Inc., *Complainant,* *vs.* Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, the names of the members thereof being unknown to this plaintiff, *Defendants.*	In Equity No. 4593. Civil Docket.

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This cause came on to be further heard on the 13th day of October, 1936, W. L. Gold and Ray T. McCann appearing as solicitors for the complainant, and A. W. Richter appearing for the defendants, and after hearing the allegations and proofs of the parties, and being advised in the premises, I, the Judge before whom said cause was tried, do determine and find as

Findings of Fact.

1. Complainant is a corporation duly organized and existing under and pursuant to the laws of the state of Delaware and located and having its office and principal place of business in the city of Wilmington in said state of Delaware, and a citizen and resident of said state, and at the time of the commencement of this action was and now is the owner and operator of five meat markets in the city of Milwaukee, Wisconsin, situated as follows:

1212 West Mitchell Street
2221 North 3rd Street
1306 West Vliet Street
1208 West Lincoln Avenue
3429 West North Avenue.

2. That the matter in controversy in this cause exceeds, exclusive of interest and costs the sum, and exceeds the value, of $3,000.

3 3. The defendant, Edward Lauf, is a citizen and resident of the city of Milwaukee, state of Wisconsin, and is

the business manager of the defendant, Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, which latter defendant is an unincorporated labor union, and a citizen and resident of the state of Wisconsin.

4. Complainant has in its employ in Milwaukee, Wisconsin, approximately 35 persons, who are employed in the business of conducting the aforementioned meat markets and that none of said employees were, at the time of the commencement of this suit, members of the defendant, Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73.

5. The defendants, Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, have made demand upon complainant that it require its said employees, as a condition of their continued employment by complainant, to become members of such defendant labor union, Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73. That the complainant has notified its employees that they were free to join said union if they so desired, and complainant is now ready and willing to permit them to so join, but that said employees have declined and refused to join said labor union; that said defendant labor union was not the union chosen by any of the said employees of the complainant to represent them in any respect with the complainant.

6. For the purpose of coercing the complainant to require its employees to join and become members of said defendant labor union, and accept it as their bargaining agent and representative, as a condition of their continued employment, and for the purpose of injuring and destroying the business of the complainant at said meat markets, in the event complainant refused to yield to such coercion, the defendants have conspired and concerted between them to cause, and
4 have, commencing on April 6, 1935, and continuously thereafter until enjoined pendente lite on April 19, 1935, caused false and misleading signs, placards and banners to be placed before the said meat markets of the complainant and have caused persons, none of whom are employees of the complainant, to parade and picket before the said meat markets of the complainant, and have falsely accused the complainant of being unfair to organized labor in its dealings with its said employees, and that all of the defendants have prevented patrons and prospective patrons of the complainant from patronizing its said meat markets by molestation,

annoyance, threats and intimidation, and said defendants would have continued said action but for said injunction pendente lite, and said defendants would continue such action in the future unless permanently enjoined.

7. That complainant has suffered, and will suffer, irreparable injury from the continuance of the practices of the defendants, and that the customers and prospective customers of the complainant are and will be restrained and intimidated from patronizing said complainant, by reason of the acts of the said defendants.

8. There is in existence no labor dispute between complainant and defendants, or any or either of them.

9. That complainant has no adequate remedy at law, and

10. That defendants have failed to establish the allegations of their cross-complaint.

I find as

Conclusions of Law.

1. That complainant is bound under the terms of 29 U. S. C. A., Section 102, as well as Sections 268.18 and 268.19, Wis. Stats. of 1933, to permit its employees free agency in the matter of the choice of labor union or organization to act as their representatives.

5 2. Complainant is entitled to a writ of injunction of this court permanently restraining and permanently enjoining the defendants, and each of them, as well as their officers, agents, employees, associates and confederates from doing the acts complained of herein.

3. That the undertaking executed on behalf of the complainant upon the issuance of the injunction pendente lite be and the same hereby is cancelled, and said Fireman's Fund Indemnity Company be and it hereby is discharged from any and all liability on said undertaking.

4. That the cross-complaint of the defendants herein be dismissed on its merits.

5. That the complainant have and recover of the defendants, and each of them, the sum of $_____ cost and disbursements to be taxed and inserted herein by the clerk of this court.

Dated, Milwaukee, Wisconsin, October 13 1936.

F. A. Geiger,
District Judge.

Endorsed: "Filed Oct 13, 1936 B. H. Westfahl, Clark."

6 And afterwards, to-wit: on the eighth day of said Term, to-wit: on the 13th day of October, A. D. 1936, the following proceedings were had, to-wit: Entered O. 13, 1936

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—4593) * *

October 13, A. D. 1936.

Before the Hon. Ferdinand A. Geiger, Judge.

This cause came on to be further heard on the 13th day of October, 1936, and it was stipulated that the evidence offered by the plaintiff upon its application for injunction pendente lite be received as and for the evidence of this plaintiff in this case, and the defendants offered their proof, and the court having been advised in the matter, and having signed findings of fact and conclusions of law.

Now, Thereupon, and upon consideration thereof,

It Is Ordered, Adjudged And Decreed as follows:

1. That the cross-complaint of the defendants be and it hereby is dismissed on the merits.

2. That a writ of permanent injunction issue under the seal of this court permanently enjoining and restraining the defendants, Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, and their officers, agents, employees, associates and confederates, from in any wise picketing the meat markets of the

7 complainant located at

1212 West Mitchell Street
2221 North 3rd Street
1306 West Vliet Street
1208 West Lincoln Avenue
3429 West North Avenue,

all in the city and county of Milwaukee, state of Wisconsin, and from seeking in any manner to coerce the complainant, E. G. Shinner & Company, Inc., to discharge out of its employ any of its employees for the reason that said employees do not choose to join the defendant, Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, or to coerce said complainant to compel its said employees to become members of or accept the defendant, Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, as the bargaining agent and representative of

said employees; and from advertising, stating or pretending that the said complainant, E. G. Shinner & Company, Inc., is in any wise unfair to the said defendants or organized labor generally, and from annoying, molesting or persuading or soliciting any customers or prospective customers of the said complainant to cease patronizing the complainant at its meat markets as hereinbefore described.

3. That the undertaking executed by Fireman's Fund Indemnity Company on behalf of the complainant upon the issuance of the injunction pendente lite be and the same hereby is cancelled, and said Fireman's Fund Indemnity Company be and it hereby is discharged from any and all liability on said undertaking.

Dated October 13 1936.

Enter.

F. A. Geiger,
District Judge.

1 Oct. 15, 36. 8 Oct. 15, 1936—Writ of Permanent Injunction, filed as follows:

IN THE DISTRICT COURT OF THE UNITED STATES

• • (Caption—4593) • •

WRIT OF PERMANENT INJUNCTION.

Whereas, E. G. Shinner & Company, Inc., complainant, has filed in the office of the clerk of the District Court of the United States for the Eastern District of Wisconsin, a bill in equity duly verified in the above entitled matter praying that the defendants, Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, be permanently restrained and permanently enjoined from in any wise picketing the meat markets of the complainant at

1212 West Mitchell Street
2221 North 3rd Street
1306 West Vliet Street
1208 West Lincoln Avenue
3429 West North Avenue

all in the city and county of Milwaukee, state of Wisconsin, and from seeking in any manner to coerce the complainant, E.

G. Shinner & Company, Inc., to discharge out of its employ any of its employees for the reason that said employees do not choose to join the defendant, Amalgamated Meat Cutters and Butcher Workmen of North America, Local 73, or to coerce said complainant to compel its said employees to become members of or accept the defendant, Amalgamated Meat Cutters and Butcher Workmen of North America, Local number 73, as the bargaining agent and representative of said
9 employees; and from advertising, stating or pretending that the said complainant, E. G. Shinner & Company, Inc., is in any wise unfair to the said defendants or organized labor generally, and from annoying, molesting or persuading or soliciting any customers or prospective customers of the said complainant to cease patronizing the complainant at its meat markets as hereinbefore described; and

Whereas, the Honorable Ferdinand A. Geiger, Judge of the District Court of the United States for the Eastern District of Wisconsin, has this day made and entered an order allowing a writ of permanent injunction to be issued,

Now, Therefore, you, the said defendants, Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local number 73, your officers, agents, employees, associates and confederates are hereby strictly and permanently enjoined and restrained from in any wise picketing the premises of the complainant, E. G. Shinner & Company, Inc. at

1212 West Mitchell Street,
2221 North 3rd Street
1306 West Vliet Street
1208 West Lincoln Avenue,
3429 West North Avenue

all in the city and county of Milwaukee, state of Wisconsin, and are hereby strictly and permanently enjoined and restrained from seeking in any manner to coerce complainant, E. G. Shinner & Company, Inc., to discharge out of its employ any of its employees for the reason that said employees do not choose to join the defendant, Amalgamated Meat Cutters and Butcher Workmen of North America, Local number 73, or to coerce said complainant to compel said employees to become members of or accept the defendant, Amalgamated Meat Cutters and Butcher Workmen of North America, Local number 73, as the bargaining agent and representative of said employees; and from advertising, stating or pretending that the said complainant, E. G. Shinner & Company, Inc., is in

any wise unfair to the said defendants or organized labor
10 generally, and from annoying, molesting or persuading or soliciting any customers or prospective customers of the said complainant to cease patronizing the complainant at its meat markets as hereinbefore described.

This permanent injunction must be strictly observed under the penalties of the law.

Witness: The Honorable Ferdinand A. Geiger, the Judge of said court with the seal thereof hereto affixed this 13th day of October, A. D. 1936.

B. H. Westfahl,
(Seal) *Clerk.*

Endorsed: "Filed Oct 15, 1936, B. H. Westfahl, Clerk."

Jan. 8, 37.

16 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—4593) * *

ASSIGNMENT OF ERRORS.

The defendants state that there is manifest error in the proceedings in this cause and in the rendition of the decree and judgment and issuance of a writ of permanent injunction entered by the court herein on October 13, 1936, and assign as errors on appeal,

That the court erred:

1. In granting the complainant a writ of permanent injunction and erred in not denying complainant said injunction.

2. In finding,

"8. There is in existence no labor dispute between complainant and defendants, or any or either of them."

3. In failing to find that there was a labor dispute between complainants and defendants, and that such dispute is governed by the provisions of

"Title 29, U. S. C. A. Sec. 113, subsections a, b, c and d thereof."

4. In finding those facts set forth in paragraph five of the findings and particularly that,

"complainant is now ready and willing to permit them to so join, but that said employees have declined and refused to join said labor union; that said defendant labor union was not the union chosen by any of the said employees of the

complainant to represent them in any respect with the complainant."

5. In finding the facts set forth in paragraph 6 of the findings, particularly that the defendants

"caused false and misleading signs, placards and ban-
17 ners to be placed before the said meat markets of the complainant."

and that the defendants

"have falsely accused the complainant of being unfair to organized labor in its dealings with the said employees."

6. In finding,

"That complainant has suffered, and will suffer, irreparable injury from the continuance of the practices of the defendants, and that the customers and prospective customers of the complainant are and will be restrained and intimidated from patronizing said complainant, by reason of the acts of the said defendants."

7. In its conclusions of law, to-wit:

"1. That complainant is bound under the terms of 29 U. S. C. A. section 102, as well as sections 268.18 and 268.19, Wis. Stats. of 1933, to permit its employees free agency in the mattter of the choice of labor union or organization to act as their representatives.

"2. Complainant is entitled to writ of injunction pendente lite of this court restraining and enjoining the defendants, and each of them, as well as their officers, agents, employees, associates and confederates from doing the acts complained of herein."

8. In restraining the defendants by writ of injunction from engaging in the following acts:

(a) From

"in any wise picketing the meat markets of the complainant."

(b) From

"advertising, stating or pretending that the complainant, E. G. Shinner & Company, Inc., is in any wise unfair to the said defendants or organized labor generally."

(c) From

"in any wise persuading or soliciting any customers or prospective customers of the said complainant to cease patronizing complainant."

9. In refusing to permit all competent evidence in support of the answer and cross-complaint of the defendants to the effect that the complainant was guilty of violating Sections 268.18 to 268.30 inclusive, of the laws of the State of

Wisconsin, in that the complainant expressly pleaded reliance on 268.18 of the Wisconsin Statutes as a basis for injunctive relief.

10. In failing to find that complainant was not entitled to the relief prayed for, because the complainant has failed to comply with the obligations imposed upon it by Section 268.18, Wisconsin Statutes of 1933, in the following respects:

18 (a) That the complainant denied to its employees full freedom of association and self organization;

(b) That the complainant interfered with the free choice of representatives by its employees;

(c) That the defendant pursued a course of conduct designed to prevent self organization and free choice of representatives by assisting, fostering and promoting a so-called company union.

11. In failing to find the complainant was not entitled to the relief prayed for because the complainant had failed to comply with the obligations imposed upon it by Section 102 of Title 29 U. S. C. in the following respects:

(a) That the complainant denied to its employees, full freedom of association and self organization;

(b) That the complainant interfered with the free choice of representatives by its employees;

(c) That the defendant pursued a course of conduct designed to prevent self organization and free choice of representatives by assisting, fostering and promoting a so-called company union.

12. In failing to find that complainant was not entitled to the relief prayed for because the complainant had failed to make every reasonable effort to settle the dispute of the parties either by negotiation or with the aid of any governmental machinery of mediation or voluntary arbitration as required by Section 108 of Title 29, U. S. C.

13. In failing to find the specific requirements of the provisions of 29 U. S. C. Sec. 107, in the following respects:

(a) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(b) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection;

(c) That unlawful acts have been threatened and will be

committed unless restrained or have been committed and will be continued unless restrained;

(d) That substantial and irreparable injury to complainant's property will follow.

19 14. In issuing a writ of permanent injunction against Edward Lauf and against Amalgamated Meat Cutters and Butcher Workmen of North America, Local 73, because there is no evidence that Edward Lauf or said union have made any threats or committed any lawful act, nor had they or either of them knowledge of any such acts.

15. In issuing an injunction against officers, agents, employees, associates and confederates, there being no evidence that officers, agents, employees, associates and confederates of the defendants committed any unlawful acts, and for the reason that there is no showing that the defendants had any officers, agents, employees, associates and confederates for the purpose of committing illegal or unlawful acts.

16. In its exclusion of evidence.

17. In its admission of evidence.

Wherefore, the defendants pray that the decree and judgment of the above court directing the issuance of the writ of permanent injunction in the above action be reversed.

A. W. Richter,
Defendants' Attorney.

20 (Endorsed): In the District Court of the United States • • (Caption—4593) • • Assignment of Errors. Filed Jan 8 1937. B. H. Westfahl, Clerk.

21 Jan. 8, 1937—Petition for Appeal, filed as follows: Filed Jan. 8, 1937.

IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—4593) • •

PETITION FOR APPEAL.

To the Honorable United States Circuit Court of Appeals for the Seventh Circuit, and to the Honorable District Court of the United States for the Eastern District of Wisconsin, the Honorable F. A. Geiger, Judge thereof Presiding:

The above named defendants considering themselves aggrieved by the Final Decree and Judgment in the above en-

titled cause on the 13th day of October, 1936, do hereby appeal from said decree and judgment to the United States Circuit Court of Appeals for the Seventh Circuit, and state that their reasons for said appeal are specified in the assignment of errors filed herewith, and they, therefore, pray that an appeal may be allowed and that a transcript of the record and of the proceedings, and papers, evidence and exhibits in said cause, duly authenticated, together with the material exhibits introduced and used as evidence therein, may be sent to the United States Circuit Court of Appeals for the Seventh Circuit.

Dated, this 7th day of January, 1937.

A. W. Richter,
Attorney for above named defendants.

Endorsed: "Filed Jan. 8, 1937. B. H. Westfahl, Clerk."

Filed Jan. 8, 1937.

22 January 8, 1937—Order Allowing Appeal, filed as follows:

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—4593) * *

ORDER ALLOWING APPEAL.

The defendants having prayed an appeal from the final decree and judgment herein,

It Is Ordered that the appeal so prayed for is hereby allowed and the Clerk of this Court is directed to make return to this appeal in accordance with the rules and practice of the United States Circuit Court of Appeals for the Seventh Circuit.

It Is Further Ordered that the appeal cost bond to be given by defendants is hereby fixed at the sum of Two Hundred Fifty ($250.00) Dollars.

Dated, at Milwaukee, Wisconsin, this 8th day of January, 1937.

F. A. Geiger,
Judge of the United States District Court for the Eastern District of Wisconsin.

Endorsed: "Filed Jan. 8, 1937. B. H. Westfahl, Clerk."

23 January 9, 1937—DEFENDANT'S BOND ON APPEAL, filed as follows: Filed Jan. 1937.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—4593) * *

BOND.

Know All Men by These Presents, that we, Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 73, of the City of Milwaukee, Wisconsin, as principals, and Standard Accident Insurance Company, of Detroit Michigan, as surety, are held and firmly bound unto, E. G. Shinner & Company, Inc., a Delaware corporation, in the penal sum of Two Hundred Fifty ($250.00) Dollars, good and lawful money of the United States, to the payment of which well and truly to be made we bind ourselves, our heirs, legal representatives, executors, administrators, successors or assigns, jointly, severally and firmly by these presents.

Sealed with our seals and dated this 9th day of January, 1937.

Whereas, lately at a session of the District Court of the United States for the Eastern District of Wisconsin, in a suit pending in said court between the above named complainant and the above named defendants, a final decree and judgment was rendered against said defendants, and said defendants obtained from said court an order allowing an appeal to the United States Circuit Court of Appeals for the Seventh Circuit, and filed a copy thereof in the Clerk's office of the same court and a citation directed to the plaintiff citing and admonishing it to be and appear at the United States Circuit Court of Appeals for the Seventh Circuit, to be held at Chicago, County of Cook, State of Illinois,
24 within thirty (30) days from the date hereof.

Now, the Condition of the above obligation is such that if said defendants shall prosecute their appeal to effect, and shall pay all damages and costs that may be awarded against them if they shall fail to make their plea good, then the above

obligation is to be void, otherwise to remain in full force and effect.

Edward Lauf,
Amalgamated Meat Cutters and Butcher Workmen of North America, Local #73,
By Edward Borczykowski,
Fin. Sect.
Principals.
Standard Accident Insurance Company,
By T. Z. Clayton,
(Seal) *Surety.*

Approved, January 8, 1937.
(Signed) F. A. Geiger,
United States District Judge.

Endorsed: "Filed Jan 9 1937 B. H. Westfahl, Clerk."

d Feb. 4, 937.

27 February 4, 1937—PRAECIPE, filed as follows:

IN THE DISTRICT COURT OF THE UNITED STATES.
• • (Caption—4593) • •

To the Clerk of the United States District Court for the Eastern District of Wisconsin:

Sir:

Please prepare the transcript of record and proceedings in the above entitled cause for use on appeal heretofore allowed herein, and include in said transcript the following:

1. Transcript of record on former appeal in this cause #5551, (which need not be transmitted by the Clerk).
2. Stipulation that transcript of record of former appeal be incorporated without reprinting the same.
3. Findings of Fact and Conclusions of Law.
4. Judgment.
5. Permanent Injunction.
6. Statement of Evidence.
7. Assignment of Errors.

Petition for Appeals.

8. Order allowing appeal.
9. Defendants' Bond on Appeal.
10. Citation.

11. Praecipe.
12. Clerk's Certificate.

It Is Hereby Stipulated and Agreed that the foregoing may be approved as the Praecipe in the case without further notice, and without the statutory period of time for respondent to file further praecipe.

28 Dated, this 30 day of January, 1937.

(Sgd.) W. L. Gold,
Ray T. McCann,
Attorneys for Complainant.

(Sgd.) A. W. Richter,
Attorney for Defendant.

The foregoing praecipe is hereby approved and it is so ordered.

Dated, this 3rd day of February, 1937.

(Sgd.) F. A. Geiger,
District Judge.

Endorsed: "Filed Feb 3, 1937 B. H. Westfahl, Clerk."

29 CERTIFICATE OF CLERK.

United States of America
Eastern District of Wisconsin } ss.

I, B. H. Westfahl, Clerk of the District Court of the United States of America for the Eastern District of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, which are copies, with their originals now on file and remaining of record in my office, and that they are true copies of the pleadings, decree, and other papers and proceedings. I further certify that hereto attached are the original assignment of errors, citation and additional narrative statement of evidence on appeal, in the case of E. G. Shinner & Co., Inc. *vs.* Edward Lauf, et al.

In Testimony Whereof, I have hereunto set my hand, and duly affixed the seal of said Court at the City of Milwaukee, in said District, this 3rd day of February, in the year of our Lord, one thousand nine hundred thirty-seven, and of the Independence of the United States, the 161st.

B. H. Westfahl,
Clerk.

(Seal)

25 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—4593) * *

CITATION.

United States of America to E. G. Shinner & Company, Inc., Greeting:

You are hereby notified that in a certain case in equity in the United States District Court for the Eastern District of Wisconsin, wherein E. G. Shinner & Company, Inc., is complainant, and Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, are defendants, an appeal has been allowed the defendants therein to the United States Circuit Court of Appeals, Seventh Circuit. You are hereby cited and admonished to be and appear in said court at Chicago, thirty (30) days after the date of service of this citation to show cause, if any there be, why the order and decree appealed from should not be corrected and speedy justice done the parties in that behalf.

Witness the Honorable F. A. Geiger, Judge of the United States District Court for the Eastern District of Wisconsin, this 8 day of January, 1937.

F. A. Geiger,
United States District Judge.

26 (Endorsed) In the District Court of the United States * * (Caption—4593) * * Citation Copy Received January 11, 1937 Gold & McCann, Attys for Pltf. Filed Jan 14 1937 B. H. Westfahl, Clerk.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

Filed Feb. 1937.

For the Seventh Circuit.

E. G. Shinner & Company, Inc.,
Plaintiff,

vs.

Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 73,
Defendants.

6172

It Is Hereby Stipulated and Agreed, subject to the consent of the Judge of the United States District Court for the Eastern District of Wisconsin, and of the Circuit Court of Appeals for the Seventh Circuit, that the entire transcript of record in the former appeal taken in this cause entitled: "Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 73, Appellants, *vs.* E. G. Shinner & Company, Inc., Appellee," No. 5551, (82 Fed. Rep. (2nd) 69) may be made a part of the transcript of record on this appeal without reprinting the same.

Dated January 18, 1937.

W. L. Gold &
Ray T. McCann,
Attorneys for Complainant and Appellee.
A. W. Richter,
Attorneys for Defendants and Appellants.

Upon reading and filing the foregoing stipulation,

It Is Ordered that the entire transcript of record in the former appeal taken in this cause entitled: "Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 73, Appellants, *vs.* E. G. Shinner & Company, Inc., Appellee," No. 5551, be and the same is hereby made a part of the transcript of record on this appeal without reprinting the same.

Dated January 28 1937.

By the Court,

Evan A. Evans,
Judge of the United States Circuit Court of Appeals, for the Seventh Circuit.

(Endorsed) Filed Feb 10 1937 Frederick G. Campbell, Clerk.

[fol. 22] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

At a regular term of The United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States Court House in the City of Chicago in said Seventh Circuit, on the sixth day of October, 1936, of the October Term in the year of our Lord One Thousand Nine Hundred and Thirty-Six and of our Independence the One Hundred and Sixty-First.

6172

EDWARD LAUF and AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL No. 73

vs.

E. G. SHINNER & COMPANY, INC.

Appeal from the District Court of the United States for the Eastern District of Wisconsin

And on, to wit, the 10th day of February, 1937, there was filed in the office of the Clerk of this court a stipulation and order dated January 28, 1937, which said stipulation and order are in the words and figures following, to wit:

"IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

6172

"E. G. SHINNER & COMPANY, INC., Plaintiff,

vs.

EDWARD LAUF and AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL No. 73, Defendants

"It is Hereby Stipulated and Agreed, subject to the consent of the Judge of the United States District Court for the Eastern District of Wisconsin, and of the Circuit Court of Appeals for the Seventh Circuit, that the entire transcript of record in the former appeal taken in this cause entitled: 'Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 73, Appellants, vs. E. G. Shinner & Company, Inc., Appellee,' No. 5551, (82 Fed. Rep. (2nd) 69) may be made a part of

[fol. 23] the transcript of record on this appeal without reprinting the same.

"Dated January 18, 1937.

"W. L. Gold and Ray T. McCann, Attorneys for Complainant and Appellee. A. W. Richter, Attorneys for Defendants and Appellants.

"Upon reading and filing the foregoing stipulation,

"It is ordered that the entire transcript of record in the former appeal taken in this cause entitled: 'Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 73, Appellants, vs. E. G. Shinner & Company, Inc., Appellee', No. 5551, be and the same is hereby made a part of the transcript of record on this appeal without reprinting the same.

"Dated January 28, 1937.

"By the Court.

"Evan A. Evans, Judge of the United States Circuit Court of Appeals, for the Seventh Circuit.

"Endorsed: Filed Feb. 10, 1937. Frederick G. Campbell, Clerk."

And on the same day, to wit, the 10th day of February, 1937, there was filed in the office of the Clerk of this Court an appearance of counsel for appellee, which said appearance is in the words and figures following, to wit:

"In the United States Circuit Court of Appeals for the Seventh Circuit

6172

"E. G. Shinner & Company, Inc., Plaintiff and Appellee,

vs.

Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 73, the Names of the Members Thereof Being Unknown to This Plaintiff, Defendants and Appellants

[fol. 24] "To Honorable Frederick G. Campbell, Clerk of United States Circuit Court of Appeals, for the Seventh Circuit:

"Please enter our appearance as counsel for the appellee, E. G. Shinner & Company, Inc., in the above entitled action.

"Dated February 6, 1937.

"W. L. Gold. Ray T. McCann.

"Service of notice of appearance admitted this 6th day of February, 1937.

"A. W. Richter, by E. Rubin, Attorney for Defendants and Appellants.

"Endorsed: Filed Feb. 10, 1937. Frederick G. Campbell, Clerk."

And afterwards, to wit, on the 12th day of February, 1937, there was filed in the office of the Clerk of this Court an appearance of counsel for appellants, which said appearance is in the words and figures following, to wit:

"UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, OCTOBER TERM, 1936

"No. 6172

"EDWARD LAUF and AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL NO. 73

vs.

E. G. SHINNER & COMPANY, INC.

"The Clerk will enter my appearance as counsel for the Appellants.

"A. W. Richter, 510 Caswell Block, Milwaukee, Wisconsin.

"Endorsed: Filed Feb. 12, 1937. Frederick G. Campbell, Clerk."

And afterwards, to wit, on the 21st day of April, 1937, the following further proceedings were had and entered of record, to wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Wednesday, April 21, 1937.

Court met pursuant to adjournment.

Before Hon. William M. Sparks, Circuit Judge; Hon. J. Earl Major, Circuit Judge; Hon. Walter C. Lindley, District Judge

[fol. 25] 6172

EDWARD LAUF et al.

vs.

E. G. SHINNER & COMPANY, INC.

Appeal from the District Court of the United States for the Eastern District of Wisconsin

Now this day come the parties by their counsel, and this cause comes on to be heard on the printed record and briefs of counsel, and on oral argument by Mr. A. W. Richter, counsel for appellants, and by Mr. W. L. Gold, counsel for appellee, and the Court having heard the same takes this matter under advisement.

And afterwards, to wit, on the 13th day of May, 1937, there was filed in the office of the Clerk of this Court the opinion of the Court, which said opinion is in the words and figures following, to wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, OCTOBER TERM, 1936, APRIL SESSION, 1937

No. 6172

EDWARD LAUF and AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL NO. 73, Appellants,

vs.

E. G. SHINNER & COMPANY, INC., Appellee

Appeal from the District Court of the United States for the Eastern District of Wisconsin

May 13, 1937

Before Sparks and Major, Circuit Judges, and Lindley, District Judge

SPARKS, Circuit Judge:

This appeal is taken from a decree permanently enjoining appellants from picketing appellee's places of business;

from seeking in any manner to coerce appellee to discharge any of its employees who do not belong to appellant union, or to compel its employees to become members of the union and to accept it as their bargaining agent and representative; and from advertising that appellee is unfair to organized labor or molesting or persuading its customers or prospective customers to cease patronizing it.

We are here asked to review the same facts and law as were presented to us for review on appeal from a decree of temporary injunction in Lauf v. Shinner and Co., 82 F. (2d) 68. It was there shown that although no controversy existed between appellee and its employees, none of whom belonged to appellants' union, the latter sought to compel appellee to require of its employees that they join the union as a condition of their continued employment. We held on the authority of United Electric Coal Co. v. Rice, 80 F. (2d) 1, that the facts there present presented no labor dispute, hence the Norris-LaGuardia Act was no bar to the right of the court to issue the temporary injunction, and under those facts there was no error in the issuance of such injunction. See also Scavenger Service Corp. v. Courtney, 85 F. (2d) 825; Newton v. La-Clede Steel Co., 80 F. (2d) 636.

Appellants state that the issues here involved are practically identical with those of the former case, and challenge the correctness of this court's decision in that case. That decision was based on our interpretation of the Norris-LaGuardia Act, and our construction of the statute has become the "law of the case," not to be changed unless it is clearly erroneous and unsound. Zurich General Ins. Co. v. O'Keefe, 64 F. (2d) 768; International Brotherhood v. Western Union, 46 F. (2d) 736; Radio Corp. v. DeForest, 47 F. (2d) 606. We are not convinced that our holding in the former case was in error, hence cannot disturb the decree of the District Court based on that decision.

Decree affirmed.

Endorsed: Filed May 13, 1937. Frederick G. Campbell, Clerk.

[fol. 26] And on the same day, to wit, the 13th day of May, 1937, the following further proceedings were had and entered of record, to wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Thursday, May 13, 1937.

Court met pursuant to adjournment.

Before. Hon. William M. Sparks, Circuit Judge; Hon. J. Earl Major, Circuit Judge; Hon. Walter C. Lindley, District Judge

6172

EDWARD LAUF and AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL NO. 73

vs.

E. G. SHINNER & COMPANY, INC.

Appeal from the District Court of the United States for the Eastern District of Wisconsin

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Wisconsin, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decree of the said District Court in this cause appealed from be and the same is hereby affirmed with costs.

[fol. 27] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten pages, numbered from 22 to 26, inclusive, contain a true copy of the proceedings had and papers filed (excepting the briefs of counsel) in the case of Edward Lauf et al. vs. E. G. Shin-

ner & Company, Inc., No. 6172, October Term, 1936, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 24th day of May, A. D. 1937.

Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit. (Seal United States Circuit Court of Appeals, Seventh Circuit.)

(551)

[fol. 1] [Placita omitted]

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

In Equity. No. —

E. G. SHINNER & COMPANY, INC., Complainant,

vs.

EDWARD LAUF and AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, Local Number 73, the Names of the Members Thereof Being Unknown to This Plaintiff, Defendants

Civil Docket

BILL OF COMPLAINT—Filed April 11, 1935

To the Judge of the District Court of the United States for the Eastern District of Wisconsin:

E. G. Skinner & Company, Inc., a corporation being or-
[fol. 2] ganized and existing under the laws of the state of Delaware, with its principal place of business and having its residence in Wilmington, in the state of Delaware, and a citizen of said state of Delaware, alleges as its bill of complaint against the defendants, and each of them:

1. The complainant, E. G. Skinner & Company, Inc., now is and was at all times herein mentioned and for several years last past has been a corporation duly organized and existing under and pursuant to the laws of the state of Delaware and located and having its office and principal place of business in the city of Wilmington, in said state of Delaware, and a citizen of said state, and having its residence in said state, and at all times hereinafter mentioned was and now is the owner and operator of five meat markets in the city of Milwaukee, Wisconsin, which said meat markets are situated as follows:

1212 West Mitchell Street
2221 North 3rd Street
1306 West Vliet Street
1208 West Lincoln Avenue
3429 West North Avenue

all in the city of Milwaukee, county of Milwaukee, and in the Eastern District of Wisconsin.

2. That the matter in controversy in this cause exceeds, exclusive of interest and costs, the sum and exceeds the value of $3,000.

3. That the defendant, Edward Lauf, on information and belief, is a citizen of the state of Wisconsin, and has his residence in said state, to-wit: in the city of Milwaukee, Wisconsin, the exact address being to your complainant unknown, and, on information and belief, that said Edward Lauf is the business manager of the defendant, Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73. That the defendant, Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, is an association of individuals, each of whom is a citizen of the state of Wisconsin, and each of whom is a resident of the state of Wisconsin.

4. That this complainant has at all times hereinafter mentioned had in its employ over thirty persons who are employed in the said business of conducting the meat markets of the complainant hereinabove enumerated, and for many years last past the relations between the complainant and its employees has been harmonious and mutually [fol. 3] satisfactory and peaceful, and complainant has paid its employees higher wages than those received by members of the defendant Union employed in other markets in Milwaukee. This complainant is informed and verily believes, none of its said employees are members of the defendant labor union, and all of said employees have rejected the repeated solicitations of the defendants to become members of said labor union. That this complainant has at all times permitted and is now willing to permit its employees to join the said defendant labor union, but that all of said employees of the complainant on being informed by this complainant that they were free to join said labor union if they so desired, declined and refused, as this complainant is informed and verily believes, to join the defendant labor union or to permit it to act as their representative or agent, and that said defendant labor union is not the union chosen by any of the said employees of the complainant to represent them in negotiating or bargaining with this complainant.

5. That notwithstanding the premises, and in violation of law, and particularly in violation of section 268.18, Wis. Stats. of 1933, the defendants have made demands upon this complainant that it enter into a contract with the said defendant labor union wherein and whereby the complainant would employ only members of said labor union, and would agree not to negotiate with any but the duly elected officers of said defendant labor union and would not make a contract with any one not affiliated with said defendant labor union; and in violation of the rights of this complainant and of the employees of this complainant, said defendants, and each of them, because of the refusal of the employees of this complainant to join said defendant labor union and accept it as their representative, have conspired, concerted and confederated together for the unlawful purpose of coercing this complainant to force its said employees, contrary to the wishes of said employees, to join said defendant labor union and to accept it as their bargaining agent and representative and of injuring and destroying the said business of complainant at said markets in the event complainant refused to yield to such coercion. In pursuance of such conspiracy, commencing on April 6, 1935, and continuously thereafter, defendants caused persons unknown to complainant and none of whom were or are employees of the complainant, to unlawfully parade and picket before said meat markets of this complainant, during business hours, bearing false and misleading signs, placards and [fol. 4] banners; and, upon information and belief, have caused such pickets to create noisy disturbances, to jostle and crowd the customers of the complainant and to obstruct the entrances to complainant's said markets, to prevent customers from examining the meats displayed in the windows of said markets, to call customers entering said markets vile and opprobrious names, to threaten said customers, to unlawfully accost, annoy and molest prospective customers of the complainant's said markets and to falsely say and represent to such prospective customers that the complainant treats its employees unfairly in the matter of representation by labor union, that the complainant pays its employees starvation wages, that the complainant is unfair to organized labor; each and every of such representations and similar statements made by said pickets being false and untrue. All of which acts are done by the said de-

fendants in pursuance of the conspiracy aforesaid, and are designed to and have the effect of preventing customers and prospective customers from patronizing the complainant's said markets.

6. That the defendants threaten to continue said unlawful acts for an indefinite time to come, and that, unless said unlawful acts are enjoined and the nuisance created thereby abated, complainant will suffer irreparable injury to its business and the customers and prospective customers of complainant will be restrained and intimidated from patronizing the markets of this complainant. That complainant has no adequate remedy at law.

Wherefore the complainant prays that the defendants be restrained and enjoined by injunction, temporary and permanent, from seeking in any manner to coerce this complainant to discharge out of its employ any employees of this complainant for the reason that said employees do not choose to join the defendant labor union, or to coerce this complainant to compel its said employees to become members of or accept the defendant union as the bargaining agent and representative of said employees; and that the said defendants and all of them and all persons acting in cooperation with them be enjoined and restrained from in any wise picketing the premises of this complainant or from representing or stating that this complainant is unfair in its dealings with said employees and with the defendants, or from annoying, molesting or soliciting any customers or prospective customers of this complainant to cease patron-
[fol. 5] izing this complainant and for such other relief as may be just and equitable in the premises.

E. G. Shinner & Company, Inc., by Archie H. Russell, Vice-President. W. L. Gold and Ray T. McCann, Solicitors for Complainant.

Duly sworn to by Archie H. Russell. Jurat omitted in printing.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

SUBPŒNA—Issued April 11, 1935

The President of the United States of America to Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, the names of the members thereof being unknown to plaintiff, Greeting:

You Are Hereby Commanded that all excuses and delays [fol. 6] set aside you be and appear within twenty days after the service of this subpœna at the Clerk's office of the United States District Court for the East. Dist. of Wisconsin, at Milwaukee, Wis., to answer unto the bill of complaint of E. G. Shinner & Company, Inc., in said Court exhibited against you. Hereof you are not to fair at your peril, and have you then and there this writ.

Witness the Honorable Ferdinand A. Geiger, United States District Judge at Milwaukee, Wis., this 11th day of April A. D. 1935.

(Signed) B. H. Westfahl, Clerk. (L. S.)

Memorandum

The Defendants in this case are required to file their answers or other defenses in the Clerk's office of said Court, on or before the twentieth day after service of this writ, excluding the day thereof; otherwise the Bill may be taken pro confesso.

Marshal's Return

Return on Service of Writ

UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

I hereby certify and return, that on the 11th day of April, 1935, I received the within Writ and served on Edward Lauf by delivering to and leaving Edward Lauf personally a true copy thereof, together with a Bill of Complaint Served on Amalgamated Meat Cutters and Butchers Workmen of North America Local Number 73 by delivering to and leaving with Edward Lauf Business Agent for said Union, personally, a true copy thereof, together with a Bill of Com-

plaint on this 11th day of April, A. D. 1935 at Milwaukee, Wis.

A. J. Lukaszewicz, United States Marshal, by (Sgd.) Roman J. Kozminski, Deputy United States Marshal.

Marshal's Fees:

Travel	$.48
Service	4.00
	$4.48

(Endorsed:) United States District Court. * * * (Caption—4593) * * * Subpœna in Equity. Filed Apr. 11 1935. B. H. Westfahl, Clerk.

[fol. 7] IN UNITED STATES DISTRICT COURT

NOTICE OF MOTION—Filed April 11, 1935

To Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, Defendants:

You Will Please Take Notice that on the 16th day of April, 1935, at 10:00 o'clock A. M., upon the bill of complaint now on file in the above entitled action, the complainant will move the court above named for a temporary injunction restraining you, the said defendants, and each of you, from in any wise picketing or causing to be picketed the premises of the complainant herein at

1212 West Mitchell Street
2221 North 3rd Street
1306 West Vliet Street
1208 West Lincoln Avenue
3429 West North Avenue

all in the city of Milwaukee, Wisconsin, and further restraining and enjoining you, the said defendants, and each of you, from advertising, stating or pretending or causing to be advertised, state- or pretended that the complainant is in any wise unfair to you the said defendants, or either of you, and further enjoining and restraining you, the said defendants,

and each of you from annoying, molesting or accosting, or soliciting or persuading any customers or prospective customers of the complainant from patronizing it at its said meat markets at the addresses aforesaid.

You Will Further Take Notice that the hearing on this motion will be upon oral evidence to be given in court at 10:00 o'clock A. M. of the day aforesaid, in the District Court Room in the Federal Building in the city of Milwaukee, at which time you, the said defendants, may appear and offer evidence and cross-examine the witnesses of the complainant herein.

E. G. Shinner & Company, Inc., by W. S. Gold, Its Solicitor.

Dated April 11, 1935.

[File endorsement omitted.]

[fol. 8] IN UNITED STATES DISTRICT COURT

NOTICE OF ADJOURNMENT—Filed April 16, 1935

To Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, Defendants:

You Will Please Take Notice that the motion of the complainant for an injunction pendente lite in the above entitled action, which said motion is dated April 11, 1935 and was served upon you on April 11, 1935, and is returnable before the court above named on April 16, 1935 at 10:00 o'clock A. M., has been adjourned by the court above named and will come on for hearing upon oral evidence to be given in said court at 10:00 o'clock A. M. on April 17, 1935 in the District Court Room in the Federal Building in the city of Milwaukee, at which time you, the said defendants, may appear and offer evidence and cross-examine the witnesses of the complainant herein.

Dated at Milwaukee, Wisconsin, this 13th day of April, 1935.

E. G. Shinner & Company, Inc., Complainant, W. L. Gold, by per W. G. Sullivan, Its Solicitor.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ANSWER AND CROSS-COMPLAINT—Filed April 19, 1935

The defendants by Joseph A. Padway, their attorney, in answer to the bill of complaint in the above entitled matter, admit, deny and allege as follows:

Admit paragraph one of the bill of complaint.

[fol. 9] Admit paragraph two of the bill of complaint.

Admit paragraph three of the bill of complaint.

Admit that the complainant conducts the business described in paragraph four of the bill of complaint, but deny that the past relations between the complainant and its employees have been harmonious and satisfactory, and deny that the complainant has paid its employees higher wages than those received by the members of the defendant union employed in other markets in Milwaukee, having regard for the hours worked by the employees of the complainant. In that regard defendants allege that the employees of the complainant have worked longer hours than those prescribed by the defendant union and longer hours than that prescribed by the Code of Fair Competition for the Retail Meat Trade, hereinafter referred to.

Defendants deny that none of the employees of the complainant are members of defendant labor union and in that connection allege that several of the employees of the complainant are members of the defendant union, and in that connection allege that the complainant upon discovering or learning that an employee was a member of the defendant union sought to discharge said employee by direct dismissal or by creating circumstances compelling the employee to leave the employ of the complainant.

Defendants deny that the employees of the complainant have rejected, repeated solicitations of the defendants to become members of the defendant labor union, and on the contrary allege that several of the employees of the complainant signified their intention of becoming members of the defendant labor union, and did become members of said labor union, but the complainant upon learning that said employees were members of the defendant labor union or intended to join, set in motion a so-called "company union" known as "Shinner Milwaukee Employees' Association", and induced its employees to join said association.

That said association was organized and created at the instance and promotion of the complainant in violation of Section 7 (a) of the National Industrial Recovery Act, and in violation of Chapter 268.18 to 268.300 inclusive of the laws of the State of Wisconsin; that said association was organized by the complainant with the express purpose of interfering with the rights of its employees to organize and bargain collectively through representatives of their own choosing, and in the promotion of said association the com- [fol. 10] plainant sought to interfere, and did interfere, with its employees in the designation of representatives for the purpose of collective bargaining, and sought to interfere and did interfere with the self-organization of its employees, all in violation of Section 7 (a) of the National Industrial Recovery Act" and of Chapter 268.18 of the Wisconsin Statutes.

Defendants deny that the complainant had at all times permitted, and is now willing, to permit its employees to join said defendant labor union, but on the contrary the complainant has interfered with said employees and restrained their will and exercise of free choice in joining the defendant labor union.

In answer to paragraph five the officers of the defendant labor union did inform the complainant that several of its workers had joined the defendant union and that others wished to join; that the officers of the defendant labor union informed the complainant that it had an agreement with other meat dealers and that it desired the complainant to enter into an agreement with the union for the purpose of regulating hours and wages; that the complainant refused to enter into such an agreement and refused to grant to its employees the terms and conditions as set forth in said agreement; that the defendant union likewise requested that the complainant comply with the hours prescribed in the Code of Fair Competition for the Retail Meat Trade; that the complainant has failed and refused to comply with said code and has employed its workers for hours longer than that prescribed in the code,

That said code is known as Code No. 540 "The Code of Fair Competition for the Retail Meat Trade" approved by the President of the United States, December 1, 1934, and was promulgated by the President of the United States by virtue of the powers vested in him by the Congress of the

United States through the National Industrial Recovery Act afore-referred to.

That the complainant is subject to said code, but has violated the provisions thereof by working its employees for periods of time and for hours longer than that permitted or prescribed by the code; that there is a labor dispute and controversy between the complainant and defendant union as defined in the United States Code, Title 29, in the act known as the "Norris-LaGuardia Act"; that such dispute involves terms and conditions of employment as defined in said Norris-LaGuardia Act, and is a dispute between [fol. 11] parties described in said act and parties engaged in the same craft, trade and industry.

That the complainant has been guilty of inequitable conduct, by virtue of the violations of Section 7 (a) of the National Industrial Recovery Act afore-referred to, and by virtue of violations of Chapter 268.18 of the laws of the State of Wisconsin, and by virtue of its violations of the Code of Fair Competition for the Retail Meat Trade Industry.

Further answering paragraph five defendants deny the specific acts of illegal and unlawful conduct referred to therein; deny that they have committed any unlawful act; deny that there is a conspiracy to commit unlawful acts, and on the contrary allege that they have picketed the premises of the complainant in small numbers, and have done so peacefully, and that the signs carried by the defendants are lawful and within the provisions of the Norris-LaGuardia Act and Sections 268.18 to 268.30 of the Wisconsin Statutes; that the conduct of the defendants, its agents and members of the defendant union have been in all respects peaceful, law-abiding, and without any breach of law or illegal interference with the rights of the complainant.

Defendants deny the allegations of paragraph six and incorporate herein the allegations of the preceding paragraph in answer thereto.

Wherefore the defendants pray that the relief prayed for by the complainant be denied to it, and that the bill of complaint be dismissed.

As and for a cross-complaint against the complainant, defendants allege:

1. Defendants repeat all of the allegations of the foregoing answer, incorporates the same herein and makes the same a part hereof as though specifically set forth.

2. Defendants allege that the officers and members of the defendant union have peacefully picketed and peacefully patrolled in small numbers in front of the premises described in the bill of complaint.

3. That these defendants have committed no illegal acts and their conduct has been peaceful and lawful.

4. That the complainant, its officers, agents and employees, in order to deny the defendants their rights as accorded them by law, in order to stir up strife, trouble and breaches of peace, have annoyed, abused and insulted the officers, agents and members of the defendant union and have called the members of the defendant union and the persons patrol- [fol. 12] ling the premises of the complainant vile and indecent names, hurled insulting epithets at them and otherwise abused them.

5. Defendants pray that the complainant, its officers, agents, servants, and employees be restrained from interfering with the defendants, its agents and members in the exercise of their lawful rights, and be restrained from using abusive and opprobrious language or epithets towards them, and for such other, further, relief as under the circumstances may be just and equitable.

Wherefore defendants pray that the bill of complaint be dismissed and that it have affirmative injunctive relief against the complainant as prayed for herein.

Joseph A. Padway, Attorney for the Defendants.

Duly sworn to by Edward Lauf. Jurat omitted in printing.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

Statement of Evidence—Filed July 5, 1935

The following is a statement of evidence produced at the hearing of this case before the Honorable Ferdinand A. Geiger, on the 19th day of April, 1935, insofar as the evidence is essential to the decision of the questions presented by this appeal.

[fol. 13] Appearances:

Messrs. Gold & McCann, represented by Walter Gold, Esq., and Ray T. McCann, Esq., appearing for the Plaintiff; Joseph A. Padway, Esq., appearing for the defendants.

The plaintiff thereupon to maintain the issues on its behalf to be maintained, offered the following evidence and testimony, to-wit:

E. G. SHINNER, a witness on behalf of complainant, testified:

Direct examination:

My name is E. G. Shinner. I am president of the Shinner Company, complainant in this case. The company operates 5 meat markets in Milwaukee. The company has 35 regular employees in Milwaukee. I have not had any discussion or talk with those men in reference to joining unions. The men have a company union. The men organized the company union. They have representatives.

I have never told any of the men, directly or indirectly, that they had no right to join the defendant union or what union they should join. I have no objection to the men joining the defendant union if they so desire.

If the men have made any complaints to me, directly or indirectly, in reference to wages, they have been satisfied. No complaint has been made within the last 6 months. There is no dispute at the present time between me and any of my men in reference to wages or in reference to hours of labor or conditions of labor. There is no dispute between me and any of my men at the present time with reference to who shall represent them. There is no dispute of any kind between me and any of my men at the present time. None of the representatives of the defendant ever approached me personally, except to mail me a proposed contract. None of my employees at the present time are picketing.

Cross-examination:

I suppose all my employees are directly engaged in operating the markets. I am familiar with the Code of Fair Competition for the retail meat trade in a general way. I [fol. 14] wouldn't say we were operating under the Code. It is being ignored, generally ignored throughout the

country. The President did prescribe a Code for the retail meat trade December 21, 1934. It was never made effective. I know that the Code prescribes wages and hours. It is true that our concern is not complying with the Code in the matter of hours. The final regulations were never set up—for the meat trade. The Code is wholly ineffective, as it was finally revised last fall. There is no machinery in existence to administer the meat trade Code so far as I know. We do employ some of our employees at work in excess of 48 hours in any one week. I do not know if we employ them in excess of 10 hours in any 24-hour period. We pay one and a half times the hourly rate for work over 10 hours a day, and 48 hours a week. We have given out to the world that we couldn't operate under the Code as originally promulgated. At the present time we have no machinery in effect to administer any Code at all. There are no officers or nobody, in a position to administer the Meat Trade Code, at the present time. I know the number of hours originally provided for, and I know we pay our men over-time and pay them about double the Code rate. We employ our men nine hours. The Code originally provided for eight. We give them over-time for extra hours. We do employ them now for a longer period than prescribed in the Code. No complaints were lodged with the local Compliance Board against my concern. If any were lodged, they would probably come to me. A Mr. Berliner of the local Compliance Board asked for various types of information, which I refused to furnish to him, stating that I did not consider myself subject to the Code, and therefore would not supply the information.

Redirect examination:

Our company has never subscribed to any Code. I never voluntarily assented to any Code.

Recross-examination:

I signed the President's Re-Employment Agreement when it first came out. I revoked it by returning the Blue Eagle January 1, 1934. The published statements of the President gave me the privilege of discontinuing the agreement and returning the Blue Eagle. If I remember, the President's [fol. 15] statement at the time, it was to the effect anyone who did not want to proceed under the reemployment agreement could discontinue it and return the Blue Eagle. As to

whether or not when that statement was made, that was made in connection with the promulgation of the Code, and the President's re-employment agreement expired 10 days after readoption of the Code, I could not say. I don't recall the procedure I went through when I returned the Blue Eagle. It was a voluntary surrender. It would be my idea that I surrendered it before a Code was adopted. I have not a copy of the original agreement with me. I assume that the agreement was one of several million sent around the country known as the President's Re-employment Agreement.

(Printed copy of President's Re-Employment Agreement received in evidence and marked "Defendant's Exhibit 'A' ".)

I surrendered it January, 1934, over a year ago. I signed it in August, 1933, when the President mailed it out about that time.

ARCHIE H. RUSSELL, a witness called on behalf of the complainant, testified:

Direct examination:

I am vice-president of the complainant. I have been in the city pretty near all of the time since April 6, 1935. I have visited the various stores. I have observed the picketing. It was mostly walking up and down in single file, and telling the customers not to patronize our stores, they were unfair to Union labor, and all that stuff, and some of the stores were quite noisy and some fairly quiet. I have had occasion to call the local police to maintain order 3 times. The last time was yesterday. They walk in single file, in a circle, to the curb and over the entrance of the door, and down to the front of the window, in some spots.

Q. What did you observe in reference to delaying each customer as he was about to enter?

A. He was usually hesitate to trifle them, trying to block the doorway.

I have not seen any physical contact between the pickets and the prospective customers. None of the plaintiff's employees have been on the picket line. There has been no dis- [fol. 16] pute between the plaintiff and its employees in re-

ference to wages, working conditions, or hours of labor. They have made no complaints to me.

(Produces photographs of picketing which are marked Plaintiff's Exhibits 1, 2 and 3.)

Mr. Joyce, a representatice of the defendant union, called me at my office in Chicago and said he was Mr. Joyce of the American Federation of Labor, and said, "We are in Milwaukee, and want you fellows to join our Union up there. They tell me up there you are the man I must see, to get a contract signed for Shinner & Company with the Butchers Union up there". I told him I could not sign any contract with him, that our men had their own association and were perfectly well satisfied, and didn't want to belong to any other Union. He said, "Well, I am going there tonight, and if you don't join, I will declare war on you." I said, "There is nothing I can do about it." He said, "All right, the war is on, and may the best man win", and he hung up. That was about March 18th. Actual picketing started April 6th. The photographs fairly represent the picketing as it existed at different times.

(Photographs received in evidence.)

I have no objection to employees joining the defendant Union if they so desire. I have not instructed them not to join a Union or talked to them at all about what Union they should join.

Q. Did you have any part in the forming of, or suggest that they form a company union, which they have?

A. No, sir.

Q. That Union was formed when?

A. I would say about last August.

Cross-examination:

I do not live in Milwaukee. I had a conversation with Mr. Joyce in Chicago. He called me on the telephone. I do not know him.

Q. You knew your men had joined the A. F. of L., some of them, in Milwaukee, some months before?

A. I didn't know what Union they belonged to.

I come to Milwaukee every week.

Q. Didn't Mr. Drop tell you he had a conference with the business agents?

A. No, he didn't say so, he had any conference, but he said Mr. Lauf called him up last week.

[fol. 17] Q. Did he tell you Mr. Joyce and others talked to him about Unionization?

A. No.

Mr. Drop is our buyer, kind of superintendent. I understand Mr. Drop had a conference with the Union men the first day picketing started but Mr. Drop didn't tell me about it. I understood there was a meeting.

I wasn't informed what complaints or demands the Union made at that time. I know Tony Koski but I didn't know he had joined the A. F. of L. organization. He is an employee of the company. I know Ben J. Kosnicki. He is an employee of the company. I did not know he joined the A. F. of L. organization. I do not know if we had in our employ a man by the name of Woodrow Bushman. I don't know Wendeling. I do know Joe Heller. He works for the company part time. Years ago he worked full time. I do not know he was a member of the A. F. of L. Union. I know Frank and Steve Szablewski. They both work for us. I knew Frank was a member of the A. F. of L. Union but I didn't know Steve was. I do not know if Ludwig Szoboda is a member of the union. I did not know nor was it reported to me commencing May, 1934, the A. F. of L. were taking employees of our company into its local.

I don't recall the date when the company Union was formed. I believe it was some time last August. Heller was not discharged because the company discovered he was an A. F. of L. Union member. We have never had a company Union in our organization before this. We have done business in Milwaukee 15 or 16 years. I wouldn't say it was a fact the company union was set in motion as a sort of counter-move to the A. F. of L. organization in our stores. It was on the request of the boys it was formed. The boys came and talked to me about it and asked me about it. They said they didn't want to join the A. F. of L. Union, and to have an organization of their own. They asked us if we would help them with the problems they had in forming it, and I told them I would. I gave them any help they asked. They wanted to know how they should go about it,

the various thing-. I helped them start it and they finished it. We helped form the company union, and the boys could do what they wanted. The boys wanted a skeleton framed up, so they would have something to work on. I got our form for the company union from various readings in newspapers and things.

The photograph marked Exhibit #3 shows pickets to be [fol. 18] walking and only 2 pickets. The sign they carry reads "This Market Unfair to Meat Cutters Union Local 73". That is all there is on the sign. The people there are not employees of any kind. Exhibit 2 shows the same thing. The photograph, Exhibit 1, shows a picket in the act of walking past the entrance of our store.

I never did learn that our employees had joined the A. F. of L. Union. I only spoke once to an official of the Union. It was about a month ago when Mr. Joyce called me. I was not informed by officials of the union that employees of our store joined the union. Mr. Joyce did not tell me the reason he wanted our men to join the Union. He did not say we were working our men longer hours than prescribed by the union. Mr. Joyce asked me when I was going to join—I was going to sign. He did not tell me the agreement provided for certain rates of wages and certain limitations or hours. All he was interested in was getting our signature. Our Chicago office received a copy of this agreement. It was received quite a long time ago, last year some time, considerably before the picketing commenced. It was sent to me by Mr. Scholl. I don't remember what he said when he sent it.

(Mr. McCann hands Mr. Padway a letter dated October 15, 1934, bearing the name "Amalgamated Meat Cutters and Butchers Workmen of N. A., General Office, 116 North LaSalle Street, Chicago, Local Union 73, and it is addressed to the E. G. Shinners Corporation, 1763 West 64th Street, Chicago, Illinois.)

The envelope contained the letter and the agreement. The agreement contains a number of articles dealing with wages to be paid, and hours of employment. One of the clauses is "B": "The basic working week for journeymen employees and apprentices shall be 48 hours, and managers and executives are exempt. Not more than ten hours in any one day, and not more than six days per week, but

in no event are the hours of the week to exceed 48 hours." I understood the Union was sending the agreement to us with a request that we sign it, become a Union shop, and agree to terms and conditions promulgated by the Unions for other shops. Among other things, in the agreement, is apprentice clauses, clauses pertaining to managers and executives, and arbitration clauses. I notice that there is one clause with respect to the kind of shop, preferential shop. It practically binds us to take nothing but men they supply us with. We can go to them, secure them from them. We rejected this contract. We did not have any one here notified that we would not accept that contract. We just [fol. 19] did not pay any attention to it. Mr. Drop hadn't any authority to sign contracts in Milwaukee. He told me Mr. Schilling called him up at one time and wanted to know when we were going to sign the contract. He told Mr. Schilling that he was busy and not to bother him. Mr. Schilling and Drop had that conversation some time last year.

Mr. Radway: I offer this in connection with the witness' testimony.

(Document marked Defendant's Exhibit "B".)

We have never signed an agreement, or otherwise consented to the terms set forth in that agreement with the Milwaukee Union or with the International of the Milwaukee Union or Chicago. The Union did not commence picketing until April 6.

The union representatives did not visit Mr. Drop very often. There were only two instances, once when Mr. Schilling called him and one when Mr. Lauf called him a few weeks ago. Mr. Joyce called me. I don't know what capacity Mr. Joyce was. The conversation by phone pertained to having us sign the agreement. I refused to do it.

The men we employ in our business are in the retail meat trade business, and they are all good butchers. Our men have been eligible to membership in the union.

Redirect examination:

Exhibit 4 shows pickets at the Vliet Street store. On one occasion I heard the pickets at least a half a block away from the Mitchell Street store. Not all the pickets carry signs.

Recross-examination:

Mr. Drop informed me about last week that Mr. Lauf had called him. Mr. Drop told me that he said to Mr. Lauf, "Don't bother me, I am too busy." Mr. Drop has no authority to sign a contract.

Q. Didn't Mr. Drop tell you he said to Mr. Lauf, "There is no use of your coming; I won't talk to you on that subject."

A. He probably did. Mr. Lauf called up last week and did not leave any telephone call, and was looking for me, and I never heard from him any more.

[fol. 20] Anna Miller, a witness on behalf of complainant, testified:

Direct examination:

My name is Anna Miller. I am a housewife. I live at 1669 South 16th Street. I have traded at the Shinner Markets for 6 or 7 years. Last Monday I attempted to enter the market on Mitchell Street to buy meats. Two men were parading in front of the market. Before I go into the market I generally look at the windows. A picket who I don't know by name but would if I saw him came to me and said, "Don't go in that market; it is no good; don't buy there; if you want cheap meat, look for cheap meat, there is plenty of butcher shops on Mitchell Street. Don't patronize Shinners, because they are no good.". I said, "Mind your own business; if I want to trade her-, I will, and I don't ask you." He said, "Then you ought to be shot, if you go into that market." And I said, "I am going."

Q. Did you go?

A. Yes, I went. I always got courteous treatment there; why shouldn't I?

Cross-examination:

That was said while I was looking in the window. He was trying to prevent me from entering. He didn't put his hands on me. I wouldn't have dared him to put his hands on me. I said, "Mind your own business", and when

he saw I spoke to him and wasn't afraid he went back to the curb. I don't know what he would have done if he saw I was afraid.

Q. He did not stop you physically, from entering that store?

A. He tried to and walked up to me.

Q. He walked up to you while you were looking in the window, and talked to you?

A. What business did he have? I did not bother him.

He didn't have any business to talk to me. When he went up to me, he asked me not to go into the place and buy meats, and talked about Shinner's, and the men there; said I should have Union men to wait on me, and I don't want to go down Mitchell Street and have four or five of them talk to me. One, specially, with a gray overcoat, had the biggest mouth. He told me I should not buy meats [fol. 21] at Shinner's. That if I wanted to buy cheap meat, I should go somewhere else. I told him he should mind his own business; I was perfectly satisfied, and always got good service, and I was going to trade "here", and he said, "You should be shot for buying in a place like that, that does not belong to the Union." My husband is working for the American Paper Company as shipping clerk, and has very fine employees. I won't believe they are Union men.

Q. I don't either.

A. And I am glad of it.

Edward J. Wentz, a witness on behalf of complainant, testified:

Direct examination:

I live at 2362 North Hubbard Street. I am a maintenance man at Columbia Hospital. I traded at Shinner's Third Street market. A week ago last Saturday morning I was walking with a cane. I had an injury to my side. There were two woman and children just ahead of me window shopping; and being as I was unsteady on my feet with a crutch, as I got to enter the market about three feet from the door, one of the boys with a banner bumped me on the left shoulder. I went closer to the window, did not say any-

thing, and went inside the shop and inquired, "What's the trouble?" He said they started picketing out in front. I don't think the boys in the shop knew there were pickets out there.

Cross-examination:

It wasn't the sign that bumped me.

Q. How many pickets were there at the time?
A. I only saw one that bumped me.

There were other people going back and forth on the walk. The picket was walking around and was about three feet from the door when he bumped me. I did not say anything to him.

[fol. 22] GUSTAVE A. HAHN, a witness on behalf of complainant, testified:

Direct examination:

I live in Wauwatosa and as a coal salesman. I am a customer of the Shinner's North Avenue market. I go there almost every day. I have been molested by pickets almost every time I went there during the last week. They said to me that the Shinner's market is unfair to Union labor, and according to the President's declaration, if I trade there I would be a chiseler. They walk within a foot from the door. They walk almost directly in front of the display windows. At one time there were five, at one time four, and one day there were two. The tone of voice they use is very loud; you can hear it at least a half a block. One talks at a time in relays.

ANTHONY J. SOKOLOWSKI, a witness on behalf of complainant, testified:

Direct examination:

I am a butcher employed by the E. G. Shinner & Company at 1208 West Lincoln. I have worked for that company about five years and have been there every day for the last two weeks except my two half-days time off. I have seen the pickets. At times there are two, four, five and I have

seen as high as nine. I didn't hear much that they said, but at times I come out in front and hear them "Don't trade in there, they is plenty Union meat markets; let a real Union man wait on you; they pay starvation wages", and all that sort of thing. The wages in our shop vary. I know my own is $34.53 a week.

I am president of the Shinner Union. The association was formed about last August. At that time we were celebrating some an-iversary, the opening of the first store in Milwaukee. Mr. Shinner gave us a little dimner, and the boys were so satisfied that the idea sprang up there. I, for one, said we should have more gatherings like this, create a good fellowship club among the members of the Shinner Company. It was where the beginning came. I never asked Mr. Shinner or Mr. Russell about joining a union. Neither ever stated to me personally whether we should or could or [fol. 23] couldn't join a union, but Mr. Shinner at that luncheon gave a little talk, and during the talk he stated it was immaterial to him what we did; we should do what we think best for us. He has nothing against any Union, if we feel we want to belong to any Union, we should go ahead and do it. Personally, he does not care.

The employees are 100 per cent members of the employees Union. There is not dispute between the association and Shinner with reference to wages, hours of labor, or working conditions. The association elects its own bargaining representatives. All their employees are working; none is picketing.

Cross-examination:

I work nine hours a day. I am not a foreman. I am the back-room man who receives all goods coming in, cutting it for the entire day, and at rush time, helping out with the trade. I put in 57 and one-quarter hours per week. When the Code went into effect I was drawing $28.00 a week. The gathering at which Mr. Shinner was present was not for the purpose of discussing the formation of a company union. Mr. Russell spoke to me that afternoon and said he thought it would be a good idea to have a little lunch to celebrate the opening of the first store. The following day we had the lunch and Mr. Shinner was present. At that meeting the subject of Unionism was discussed by Mr. Shinner.

Q. He did not care if you belonged to the A. F. of L., or another union?

A. He didn't say about the A. F. of L., and did not care what Union we belonged to; it was entirely up to us to say what was best for us.

The discussion of Unions came about because about that time everybody was talking union, and the whole country was "union". The boys, between themselves, spoke at times about Unions of different kinds. I imagine he spoke because the rest of them did at that time. We never spoke of unions at the store. Outside I did. Up to the time we formed our union I didn't know what the other employees of the other stores were doing in the matter of joining unions. I wasn't the only organizer of the company union. The idea sprang up at that meeting, and we spoke to some boys on 3rd St. and they thought it was a good idea. At first we didn't have a union in our heads. We were after a good fellowship club. We didn't want to be termed a union at [fol. 24] that time. Later as there was so much union talk, everybody was belonging to one union or another, we finally gave in and called it a union. There really were no organizers. We all came in. Nobody could get credit for organizing it. Others felt the same way as I did about it. Later we had another luncheon. We asked the help of Mr. Russell to help us organize the union, as you call it now. We told him we didn't have the experience, and didn't know how to go about it, and we got his help.

We have a constitution and by-laws. Employees of the Shinner Company are not obliged to belong to the union. They don't have to if they don't want to. This constitution was given to us by Mr. Anderson. I don't know who he is. I don't know if he is an officer of the company. He is a Chicago man. He just came and helped us form it.

Q. Your constitution embodies all provisions of Section 7 (a), did you know that?

A. It was our intention to organize under Section 7 (a); there is also a membership clause.

We hold meetings every Tuesday in each month. The foremen attend these meetings only four times a year, where they have a Board Council Meeting. The representative of each store and their manager appears at the meeting. The man is representing the men working at that store. The

managers do not represent the men. The representative picked by the men working at the store, excluding the manager, who has no right to vote in the election, represent the men. Dues are 50c a month. There was no committee or group conferring with Mr. Russell on the constitution. It was all done where we were present, and all the employees were there at the time Mr. Russell was there and Mr. Shinner at the first meeting, at the first luncheon celebrating the opening of the first store in Milwaukee.

Q. At the time the constitution was adopted, or imposed, who were present?

A. Mr. Russell and Mr. Anderson.

Also the employees. A vote was taken on the adoption, Mr. Anderson and Mr. Russell were present. They did not vote. The foremen did not vote. They were present but not voting. The meeting was held the second last or last week in October of last year. The first meeting was in August and I believe we had one other meeting in that time. At the August meeting the discussion was merely to have a welfare organization, a goodfellowship club. The one in October developed into a collective bargaining agency.

[fol. 25] Q. Isn't it a fact Mr. Russell and Mr. Anderson suggested to form this organization, with the idea in mind of collective bargaining with the employer?

A. The first time we heard of collective bargaining was when we got the help of that from the by-laws.

We had the form; and the parts we wanted to, we could accept; and the parts we wanted to reject, we could. It was not known to me at the meeting that Mr. Russell or Mr. Anderson had received, several days before, a contract or agreement from the A. F. of L. Union, asking the company to yield to terms or consent to terms proposed by the Union of A. F. of L.

(Plaintiff then offered in evidence the provisions of the articles of the Shinner's Employee Association, so far as they relate to membership they read as follows: "All employees of E. O. Shinner & Company, Inc., Milwaukee, are eligible for membership. Neither the company nor any of its managers shall discriminate against any employee, because of his joining or failing to join this association, because of church, political or Union affiliations, nor shall

coercion be used either direct, or indirect, by any manager of the company, to secure participation in this plan."

Another section provides as follows: "Employees shall have the right to organize and bargain collectively to representatives of their own choosing, and shall be free from the interference, restraint or coercion" (Reading)).

I am not a member of Local 73. I don't join because I cannot see where I will better conditions for myself by joining it.

BENEDICT J. KOSNICKI, a witness on behalf of complainant, testified:

Direct examination:

I live at 2537A South 15th Street and am employed by the E. G. Shinner & Company. I am a member of the Shinner Association. I am not a member of the defendant Union. I had made application in the defendant union and paid a dollar at the time of the application. I didn't go through with it because there was some sort of a mix-up in the other union among the men and I thought it is all right to wait a while to see how it was going to pan out. As an employee of Shin-[fol. 26] ner's I have not been given instructions as to what Union to join. Drop or any of the superintendents have not given me instructions. We never spoke of unions among ourselves. The store is located on North Avenue. I have worked there since the store opened. None of our employees are out picketing. The pickets walk around with the signs and after a while we had one fellow who was saying, "We want a real union, and don't want a company union, because the company union does not secure a man a job; all it does is buy him beer. Mr. Shinner pays for the beer, and somebody has to pay for the beer, and the boys pay 25 cents a head." People go by and crowd up close to the window and from outside on the sidewalk it reaches over sometimes on Kroger's.

The Kroger store is on the west side of our store. I have been told the pickets keep their signs in the back room. I have seen an employee of Kroger's in the picket line. The pickets walk right up against the window, sometimes bumped with their elbow.

Q. Have you seen them edge along the customers, as they stop to look in the window?

A. They would go up close, and tell them not to shop. Last night a young man, he just about crow-ed on him—I don't know if he touched him, but I know his coat brushed him and crowded over as though he would like to bump him.

When a customer is about to enter the door the pickets yell and also as we are waiting on our customers. He would be outside yelling into the shop. When prospective customers stopped to look into the window the pickets yelled louder. I can hear them way in the back room. They picket through the day during business hours.

Cross-examination:

I signed an application to join the A. F. of L. Union. They had mass meetings; I went voluntarily. Speakers addressed the meeting and urged us to join the Union. I did not join but I signed an application in the hall and paid a dollar. I did not pay any dues. I paid the dollar more or less voluntarily. I can't remember if it was in August, 1934. Soon after, the Shinner Company here had a meeting, a celebration. At that meeting Mr. Shinner made a speech about the employees having the right to belong to any Union they wanted to. He praised us, more or less, and was proud of the business. I don't recall him saying anything about [fol. 27] unions. Every man was discussing more or less about unions. Everybody was talking union.

Q. It is a fact, other Shinner men joined the A. F. of L. Union, at the same meeting you joined?

A. I don't know.

Q. Did any of them tell you he was?

A. Just one.

His name is Harry Young. I was present when the constitution was adopted. I don't know who brought it or who explained it. Mr. Anderson was there and explained some parts of the constitution. I believe I joined the organization that night.

Q. When you went to the meeting that night, did you know you were going to a meeting that was to form an association, the purpose of which was to collectively bargain with the employer?

A. We had that impression; you mean the night when they brought the constitution and by-laws?

A. Yes. Did you know when you were going there, that the meeting was called for the purpose of creating an organization to collectively bargain?

A. Which night?

Q. It is the night of the constitution. Did you think you were going there merely to join a good fellowship club?

A. That I could not say truthfully, yes or no.

Q. Isn't it a fact that the first time you heard of collective bargaining, the setting up of an organization of collective bargaining was at that meeting where the constitution was raised?

A. We were talking about it some weeks before that. There was something said about it would be better, and we should get along better if we had more to say ourselves, instead of by violence. I imagine it is the idea I had.

Q. Who promoted that?

A. As far as that goes, it was just between us fellows.

There are five working in my shop. We talked it over. I did not know Mr. Russell and Anderson were going to be at the meeting that night. I did not stay for the entire meeting.

Q. Isn't it a fact, the reason you did not join or did not attend the meetings of the A. F. of L. was because you knew the managers did not want you to become a member of the A. F. of L.?

A. The managers said nothing of the sort. Nobody said anything of the sort about joining, or not joining. If I wanted to, I had a perfect right to join. At the time I felt [fol. 28] it was all right to have an organization of some sort. I went up to the meetings and it was the same meeting—and I thought, "Well, when we start talking about the other union, it was a better outfit."

I heard the union hours were 48 but I saw them often later than that. I believe the foremen were present at the meeting attended by Mr. Russell and Mr. Anderson.

Redirect examination:

At the meeting of the A. F. of L. I attended, the initiation dues were $3.00 at the time, and they said they would be maybe up to $25.00 and it would be a good idea to join. I don't remember the Shinner firm was mentioned at that meeting.

FRANK SZABLEWSKI, a witness on behalf of complainant, testified:

Direct examination:

I live at 2405 North Booth and am employed by E. G. Shinner. I have been employed there over three years at the Third Street store. I am a member of the Shinner Association since November. I was a member of Local 73 at one time but I am not any more. I was a member of Local 73 last November. I quit them because I was running around before I started with E. G. Shinner, and me and my wife talked it over, and she said, "Here you are working steady", and she says, "Why don't you stick? You have a good place and job, and get reasonable wages." So I rang up that night Schilling, and told him I am through with Local 73, and he was up that night and asked me to sign an affidavit, and I says, "No, I can't do that." I do not know what was in the affidavit. I wasn't home that night but my wife told me what he had. Neither Shinner nor Russell or any officer of the Company has ever told me I could not belong to any Union or I had to join any union. He says it is up to me, I can go where I want.

Cross-examination:

I happened to talk this over with my wife, "you have a good job now and you better stay there", and called up Mr. Schilling and told him I did not want to belong to Local 73, [fol. 29] because I did not want to walk the street; I walked them long enough.

I was a member of the A. F. of L. Union until November. I had paid dues for a number of months. November was a few weeks after the organization of the company union. Nobody said anything to the effect that the company did not want me to belong to both organizations. I called up Mr. Schilling and said I did not want to belong to 73 because I told him I had a good job there, and I would stick with them. I was not afraid it would hurt me with my good job with the company if I remained a member of 73.

Q. Why did you do that; what connection is there between your having a good job, and the telephone call to Mr. Schilling that you do not want to be a member?

A. I made up my mind I would stay with E. G. Shinner, and I dropped out of 73.

The union did not tell me not to stay with E. G. Shinner. I recall a visit I made to the home of Mr. Mansfield. He is a representative of the A. F. of L. Union. I remember complaining to him how long the hours were at Shinners. I told him that. I remember telling him I wished all men would join the A. F. of L. Union so that we could get shorter hours. Me and my wife were complaining about long hours. I didn't ask him why he doesn't get more of our men into the union. I said everybody has to do what they want. I did not say to Mr. Mansfield, "I am working altogether too long hours for the money I get." I told him, "I am working long hours." That is all I said. At one of the meetings he asked me if I would come to his house and at that time I told him about the hours of the Shinner employees.

Q. You said they were working long hours?
A. Not exactly, but I said, "We are working overtime."

I told E. G. Shinner Company that I was a member of the A. F. of L. I told that to Mr. Russell; I think it was in the first part of November or the last of October, something like that. It was soon after the organization of the company union. The first part of November I sent in my resignation to the A. F. of L. I didn't tell Mr. Russell I was going to quit the A. F. of L.

Q. Did you know any other men, members of the A. F. of L. Union, who work for Shinner's?
A. From the one store, particular store?
Q. That, or any other?
[fol. 30] A. Once upon a time we were all in Local 73; it was Local 64 first, and then 73.

I got the transfer from Local 64 to 73. 64 and 73 are both local Unions of this A. F. of L. Meat Trade Industry. I was transferred from 64 to 73. We were all affiliated with one of the Unions of the A. F. of L. in 1933, the first part of August. When the N. R. A. was passed, soon after that the Shinner employees went into the A. F. of L. Union; most of them did. I do not know when and why they dropped out. The foreman of the Shinner Company has not told me and other men working there that they don't

want us to join the A. F. of L. It is not a fact that I quit the A. F. of L. Union because I figured I could not hold my job if I remained a member of the A. F. of L. Nobody approached me about that. I was not a legally paid-up member to November. I was paid, I think to September. I was two or three months behind. I joined the A. F. of L. the first part of August, 1933.

Ole John Sadowski, a witness on behalf of complainant, testified:

The Court: If the plaintiff can make out a prima facie case, he has made it out.

Direct examination:

I am secretary of the Shinner Association.

Cross-examination:

Q. Have you ever been a member of the A. F. of L?
A. Yes, sir.
Q. When?
A. The last part of July.
Q. I mean, when did you become a member?
A. I was not a member. I paid $3.00 on the application blank.
Q. Did you quit or just how did you sever relations?
A. I went to a few meetings and simply dropped out.

We were all present at the time the constitution and by-laws were adopted, and Mr. Russell and Mr. Anderson were there. I didn't know who Mr. Anderson was at the time. [fol. 31] I didn't know before I came that the meeting was to take up the subject of collective bargaining. We all got together and adopted it. We all talked about it at one of our parties.

Q. Who brought it to the attention of the meeting, that it was to discuss collective bargaining?
A. We all got together, and we talked Union, and saw it wasn't doing anything, and we had meeting after meeting, and didn't get anywhere so we thought we would get together and organize an association and deal with them direct.

Nobody brought the constitution and by-laws. We all got together and talked things over.

Q. You don't mean to say it was drafted, sitting right there?

A. We went over and spoke to Mr. Russell about it.

Mr. Anderson helped us prepare it. We asked him to bring it prepared. To this day I don't know who he is.

It was thereupon stipulated that Mr. Anderson is Secretary and Auditor of the company. He has offices in Chicago.

Mr. McCann: We have a lot of other witnesses, purely cumulative.

April 19, 1935, 2:00 o'clock P. M.

All parties met pursuant to adjournment last above noted.

Mr. McCann: I offer in evidence the Wisconsin Statutes, Section 268.18, and 268.19 of the Wisconsin Statutes. 208 is part of the Code, and 268.18 declares the public policy of Wisconsin and the language is the same as the Declaration of Public Policy in the Norris-LaGuardia Act.

Mr. Padway: It also contains the language of Section 7(a) in 168.18. We will offer in connection with that, the Wisconsin Statutes, I don't know if it is necessary; I think the Court will take judicial notice of it.

The Court: Yes.

EDWARD LAUF, called as a witness on behalf of defendant, testified:

Direct examination:

I live at 8818 West Mitchell Street and I am Business Agent for Local Union 73, Meat Cutters. I commenced to act in that capacity January 1st. My Union has not declared a strike against the Shinner Company. Our Union [fol. 32] has established picketing and patrolling in front of the premises of the Shinner Company.

Our Union has a dispute with the company. Our dispute is that they were violating, as to hours and working conditions and so on; and the men have come to our meetings and complained about the conditions and hours they were working, and asked us what we can do for them there,

about it. Some of the Shinner employees have been members of our Union. I am not fully familiar with the record of the Union as to members' names and so on.

Frank Szalbewski, an employee of the company, was a member of our Union at that time. Steve Zurowski, an employee of the company, is a member. Ludwig Svoboda, an employee of the company, was also a member of our Union. I really don't know whether these employees are members of our Union now; they failed to pay dues up until—I don't know exactly. Our financial secretary has the full details. He is not here. I tried to get him here by phone but the stores are closed from 12:00 to 3:00 this afternoon. I could not reach him.

Q. In your capacity as business agent of the Union, do you know any men who dropped out?

A. Employees?

Q. Who were members of the Union?

A. As far as I know, personally, there haven't any really dropped out that I know of. They merely did not pay dues, which a lot of our members haven't done, but we sent them statements; not only to Shinner men, but all our members; they give them a chance to pay up.

Q. While you are members of your Union, does the Union object to the members working longer hours than those prescribed by the Union?

A. We do.

Q. Did you, or any other officer of your organization, if you know, endeavor to meet with officials of the Shinner Company to discuss terms and conditions of employment?

A. Yes, sir.

Mr. McCann: Objected to as immaterial.

The Court: What is the materiality of this, Mr. Padway?

Mr. Padway: To show that they wanted to discuss the things in dispute, and that they were turned down in the discussion.

The Court: It is the fact, apparently, here. I assume from the plaintiff's testimony that Mr. Shinner and Mr. [fol. 33] Russell declined to, and the other man, Drop, wouldn't have anything to do with it.

I told each one of our pickets on our lines, at the Shinner stores, to keep walking; not to molest anyone; not to get into any sort of argument, even with members working in-

side; and not to—just merely to tell the people we are picketing because Shinners are unfair to our Local A. F. of L., and not to talk too loud. Some of our men, the officers on the various places, have told me—I get from one market to another; I am not long at any one; go to the markets and talk to the pickets, and give them instructions how to conduct themselves. There has been no report came to me that any were boisterous or abusive. If such reports came to me, I would take the picket off the line. The signs contain the language shown in the photograph. There are no signs containing any other language. We have two Polish signs, in Polish lettering, that is all. What is described, or written, on the Polish sign, is the same as I see here in the photographs. Our Union has taken the position this company is unfair to our Local. We have not met with very serious difficulty in organizing some of the workers of the Shinner Company in our Union. We have some members of the Shinner Company Union in our local, right today. Others, we are trying to get.

Our Union is desirous that the Shinner Company employ its help 48 hours, and no longer. I have sought to notify Mr. Drop of the complaint our Union makes against the Shinner Company, in the matter of employment of its help.

Q. When did your organization commence to solicit Shinner employees, for your own Union?

A. Those Shinner employees belonged to Local 64 before we organized our Local 73; I don't know exactly because I was not an officer at that time, when they were transferred, but our secretary has those things all in his record.

Q. The Shinner employees pay dues to that local?

A. To Local 64, yes.

Q. Do you know the names of those paying dues?

A. No, sir, I could not say.

Cross-examination:

Q. Do you know any man in the employ of the Shinner Company at the present time that has paid any dues to your local Union this year?

A. Yes, sir.

[fol. 34] Q. Give me the name.

A. (Witness produces book) I have it in here, somewhere. Charles Trahoviac, 730 East Hadley.

Q. What is the date he paid?

A. I could not say.

Q. Has he paid dues in the last 90 days?

A. Yes, sir.

I do not know exactly what month he paid his dues. I would have to look up the records.

Q. Are you able to say it is in the last 90 days?

A. Not exactly.

If a member does not pay dues for two months he is notified of the arrears and if he has not paid on the first meeting of the third month he is automatically suspended. Those are part of the International rules and of our Local rules.

One of the police officers told me to have some of the pickets more quiet.

The dispute we claim to have with Shinner, is because of their refusal to sign this contract, which is marked "B". I have read that contract. I am not very familiar with it. Besides the refusal to sign this contract we have another claimed dispute in so far as that members that work for Shinners complained to us that they are working too long hours and not getting enough money at the time. I can't recall offhand any names of those men I claim complained. I would have to look them up on the records of the Financial Secretary. I never examined the records, because the Financial Secretary takes care of all them. I can't say exactly the date of the meeting I claim an employee of the Shinner Co. attended and made a complaint, but I don't believe it was over two months ago. At that meeting I believe there were two or three Shinner employees, I am not sure.

Q. Can you give me the first name, so we can try to locate the man?

A. I really don't know. Mr. Joe Heller was one, I believe.

He was an employee of the Shinner Company at that time. He was an employee of Shinner's when he joined our Local. He was an employee of Shinner's at the time he made the complaint. I know that because Frank Szablewski was an employee at that time also.

Q. How do you know they were working for Shinner's?

A. Because they told us everybody we know who is working for Shinner's, are members; I have a lot of witnesses who can prove better than I can. Personally I don't know; [fol. 35] I can get plenty men up here that do know.

Q. I would be satisfied if I could get what you know. How do you know these men were working for Shinner's two months ago?

A. I don't think I can answer that; I would rather have the men, themselves, answer that.

Q. You don't know if they were, or not, excepting as they told you, isn't that right?

A. Yes.

Redirect examination:

At our meetings we discussed another matter relating to employment, that is, employing men who worked all week in other plants and then worked in their plants on Saturdays.

Joseph H. Heller, a witness on behalf of the defendant, testified:

Direct examination:

I worked for Shinner two Saturdays ago. I ain't been there for two Saturdays. I am a member of Local 73. I have not worked any other place the last month or two. During the last couple of months I have worked two full weeks while one man was hurt and towards the last, three days a week, Thursday, Friday and Saturday.

I joined the A. F. of L. Union in 1933, when the rest joined, it was in September, 1933. I have not been a member from that time to the present time. I have worked three days a week; I could not uphold both, to hold my job I had to stay with the company union, I figured that way. I was a full-time employee of the Shinner Company until I was let off on June 16, 1934. Another man was engaged in my place at the time I was let off. I never talked to any official of the Company about my membership in the Company Union.

I did not attend the meeting what was discussed this morning at which Mr. Russell and Mr. Anderson were present. I have attended three meetings of the Company Union. At

one meeting of the Company Union the officials were present. It was the first one at which Mr. Shinner and Mr. Russell were present. There was nothing said by Mr. Shinner or Mr. Russell so long as I was there. To my understanding the [fol. 36] meeting was called to find out about our ten per cent raise. It took three months for that. The fourth month, they told us they could not give us a raise; it is two months ago.

Q. Did Mr. Shinner and Mr. Russell discuss it at that meeting?

A. It was after I was gone.

I am not picketing.

Steve Zurowski, a witness on behalf of defendant, testified:

Direct examination.

I am a member of Local 73 since July, 1933. I have never worked for the Shinner Company. The Union authorized this picketing. I am picketing. The instructions given to pickets are to "picket peacefully, not to molest anybody, not to talk to anyone, not to answer any one on the street, but to just say 'This market is unfair to Local No. 73' ". I have conducted myself in that manner. I have not observed any picket doing otherwise. There have been other pickets with me.

Cross-examination:

Q. You haven't heard any other pickets say anything at all?

A. Not anything I did not think was fair.

The store at 13th & Vliet is the only store I was at.

Ludwig Svoboda, a witness on behalf of complainant, testified:

Direct examination:

I am the man Mr. Lauf referred to as a member of Local 73. I am not a member of Local 73 any more. I was a member of it about a year ago. The reason I quit was that I did

not see it would do any good for me; pay $1.50 dues to the Union, which did not do me any good at all; I thought this organization was far better and I joined that. It saved $1.50. I know Steve Zurowski. He is now at the Third Street store, a fellow worker.

[fol. 37] Cross-examination:

No one invited me to join the company union. I joined in October. I was at the meeting at which Mr. Anderson and Russell were present. I took it for granted that collective bargaining would be discussed at this meeting. I don't remember if the constitution there was framed right at that meeting. I don't know who brought the constitution there. I wasn't there when it was brought. Mr. Russell and Anderson were present all of the time while I was present at the meeting. I cannot say they participated in the framing of the constitution.

Q. Was that the month you dropped out of the A. F. of L. organization?

A. Yes.

Q. The month you went into the company union, was that the month you dropped out of the A. F. of L?

A. No, I was out of there about a year before I came into our organization.

I joined the A. F. of L. in 1933. I remained a member a few months. I don't know exactly. I was a member of Local 64. I don't know whether I was ever transferred over to Local 73. I haven't been to any of the meetings.

It is Hereby Stipulated and Agreed that the above and foregoing shall constitute the written statement of evidence in the above entitled action to be used in a record on appeal to the Circuit Court of Appeals.

Dated this 27 day of June, 1935.

Gold & McCann, Attorneys for Complainant. Joseph A. Padway, Attorney for Defendants.

Approved this 5 day of July, 1935.

Certificate of Judge.

F. A. Geiger, District Judge.

[File endorsement omitted.]

[fol. 38] IN UNITED STATES DISTRICT COURT

[Title omitted]

Findings of Fact and Conclusions of Law—Filed April 19, 1935

The motion of the complainant, dated April 11, 1935, coming on to be heard before this court, Gold and McCann appearing as solicitors for the complaint, and Joseph A. Padway appearing as solicitor for all of the defendants, and after hearing the allegations and proofs of the parties and arguments of counsel, and being advised in the premises, I, the Judge before whom said cause was tried, to determine and find as

FINDINGS OF FACT

1. Complainant is a corporation duly organized and existing under and pursuant to the laws of the state of Delaware and located and having its office and principal place of business in the city of Wilmington in said state of Delaware, and a citizen and resident of said state, and at the time of the commencement of this action was and now is the owner and operator of five meat markets in the city of Milwaukee, Wisconsin, situated as follows:

1212 West Mitchell Street.
2221 North 3rd Street.
1306 West Vliet Street.
1208 West Lincoln Avenue.
3429 West North Avenue.

[fol. 39] 2. That the matter in controversy in this cause exceeds exclusive of interest and costs the sum, and exceed the value, of $3,000.

3. The defendant, Edward Lauf, is a citizen and resident of the city of Milwaukee, state of Wisconsin, and is the business manager of the defendant, Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, which latter defendant is an unincorporated labor union, and a citizen and resident of the state of Wisconsin.

4. Complainant has in its employ in Milwaukee, Wisconsin 35 persons, who are employed in the business of

conducting the aforementioned meat markets and that none of said employees were, at the time of the commencement of this suit, members of the defendant, Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73.

5. The defendants, Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, have made demand upon complainant that it require its said employees, as a condition of their continued employment by complainant, to become members of such defendant labor union, Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73. That the complainant has notified its employees that they were free to join said union if they so desired, and complainant is now ready and willing to permit them to so join, but that said employees have declined and refused to join said labor union; that said defendant labor union was not the union chosen by any of the said employees of the complainant to represent them in any respect with the complainant.

6. For the purpose of coercing the complainant to require its employees to join and become members of said defendant labor union, and accept it as their bargaining agent and representative, as a condition of their continued employment, and for the purpose of injuring and destroying the business of the complainant at said meat markets, in the event complainant refused to yield to such coercion, the defendants have conspired and concerted between them to cause, and have, commencing on April 6, 1935 and continuously thereafter, caused false and misleading signs, placards and banners to be placed before the said meat markets of the complainant and have caused persons, none of whom are employees of the complainant, to parade and picket before the said meat markets of the complainant, and have falsely accused the complainant of being unfair to organized labor in its dealings with its said employees, [fols. 40-41] and that all of the defendants have prevented patrons and prospective patrons of the complainant from patronizing its said meat markets by molestation, annoyance, threats and intimidation.

7. That complainant has suffered, and will suffer, irreparable injury from the continuance of the practices of the

defendants, and that the customers and prospective customers of the complainant are and will be restrained and intimidated from patronizing said complainant, by reason of the acts of the said defendants.

8. There is in existence no labor dispute between complainant and defendants, or any or either of them.

9. That complainant has no adequate remedy at law, and I find as

CONCLUSIONS OF LAW

1. That complainant is bound under the terms of 29 U. S. C. A., section 102, as well as sections 268.18 and 268.19, Wis. Stats. of 1933, to permit its employees free agency in the matter of the choice of labor union or organization to act as their representatives.

2. Complainant is entitled to writ of injunction pendente lite of this court restraining and enjoining the defendants, and each of them, as well as their officers, agents, employees, associates and confederates from doing the acts complained of herein.

Dated at Milwaukee, Wisconsin, this 19 day of April, 1935.

F. A. Geiger, United States District Judge.

Bond on injunction for $1,000, approved and filed April 19, 1935, omitted in printing.

[fol. 42] IN UNITED STATES DISTRICT COURT

ORDER FOR WRIT—Filed April 19, 1935

The above entitled cause having come on to be heard upon the motion of the complainant for a writ of preliminary injunction upon the oral testimony of the respective parties, the court having heard such oral proofs and being fully advised in the premises, and having ordered its findings of fact and conclusions of law herein,

It is Ordered that upon the filing with the clerk of this court of good and sufficient security in the sum of One thousand and no/100 ($1000.00) Dollars conditioned according

to law, a writ of injunction pendente lite issue forthwith under the seal of this court enjoining and restraining the defendants, Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, and their officers, agents, employees, associates and confederates, from in any wise picketing the meat markets of the complainant herein located at

1212 West Mitchell Street
2221 North 3rd Street
1306 West Vliet Street
1208 West Lincoln Avenue
3429 West North Avenue

all in the City and County of Milwaukee, State of Wisconsin, and from seeking in any manner to coerce the complainant, E. G. Shinner & Company, Inc., to discharge out of its employ any of its employees for the reason that said employees do not choose to join the defendant, Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, or to coerce said complainant to compel its said employees to become members of or accept the defendant, Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, as the bargaining agent and representative of said employees; and from advertising, stating or pretending that the said complainant, E. G. Shinner & Company, Inc., is in any wise unfair to [fol. 43] the said defendants or organized labor generally, and from annoying, molesting or persuading or soliciting any customers or prospective customers of the said complainant to cease patronizing the complainant at its meat markets as hereinbefore described.

Dated, at Milwaukee, Wisconsin, this 19 day of April, 1935.

F. A. Geiger, United States District Judge.

[File endorsement omitted.]

In United States District Court

Writ of Injunction Pendente Lite—Filed April 22, 1935

Whereas, E. G. Shinner & Company, Inc., complainant, has filed in the office of the clerk of the District Court of the

United States for the Eastern District of Wisconsin a bill in equity duly verified in the above entitled matter, praying that the defendants, Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, be restrained and enjoined from in any wise picketing the meat markets of the complainant at

1212 West Mitchell Street
2221 North 3rd Street
1306 West Vliet Street
1208 West Lincoln Avenue
3429 West North Avenue

all in the city and county of Milwaukee, state of Wisconsin, and from seeking in any manner to coerce the complainant, E. G. Shinner & Company, Inc. to discharge out of its employ any of its employees for the reason that said employees do not choose to join the defendant, Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, or to coerce said complainant to compel its said employees to become members of or accept the defendant, Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 73, as the bargaining agent and representative of said employees; and from advertising, stating or pretending that the said complainant, E. G. Shinner & Company, Inc., is in any wise unfair to the said defendants or organized labor generally, and from annoying, molesting or persuading or soliciting any customers or prospective customers of the said complainant to cease patron- [fol. 44] ing the complainant at its meat markets as hereinbefore described; and

Whereas the Honorable Ferdinand A. Geiger, Judge of the District Court of the United States for the Eastern District of Wisconsin has this day made and entered an order allowing a writ of injunction pendente lite to be issued;

Now Therefore you, the said defendants, Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, your officers, agents, employees, associates and confederates are hereby strictly enjoined and restrained from in any wise picketing the

premises of the complainant, E. G. Shinner & Company, Inc. at

1212 West Mitchell Street
2221 North 3rd Street
1306 West Vliet Street
1208 West Lincoln Avenue
3429 West North Avenue

all in the city and county of Milwaukee, state of Wisconsin, and are hereby strictly enjoined and restrained from seeking in any manner to coerce complainant, E. G. Shinner & Company, Inc., to discharge out of its employ any of its employees for the reason that said employees do not choose to join the defendant, Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, or to coerce said complainant to compel said employees to become members of or accept the defendant, Amalgamated Meat Cutters and Butcher Workmen of North America, Local Number 73, as the bargaining agent and representative of said employees; and from advertising, stating or pretending that the said complainant, E. G. Shinner & Company, Inc., is in any wise unfair to the said defendants or organized labor generally, and from annoying, molesting or persuading or soliciting any customers or prospective customers of the said complainant to cease patronizing the complainant at its meat markets as hereinbefore described, until the further order of our District Court in the premises.

This injunction pendente lite you must strictly observe under the penalties of the law.

Witness: The Honorable Ferdinand A. Geiger, the Judge of said court with the seal thereof hereto affixed this 19th day of April, A. D. 1935.

(Signed) B. H. Westfahl, Clerk. (L. S.)

[File endorsement omitted.]

[fol. 45] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL—Filed May 17, 1935

To the Honorable United States Circuit Court of Appeals for the Seventh Circuit, and to the Honorable District Court of the United States for the Eastern District of Wisconsin, the Honorable F. A. Geiger, Judge thereof Presiding:

The above named defendants considering themselves aggrieved by the Writ of Injunction pendente lite issued in the above entitled cause on the 19th day of April, 1935, do hereby appeal from said order and writ to the United States Circuit Court of Appeals for the Seventh Circuit, and state that their reasons for said appeal are specified in the assignment of errors filed herewith, and they, therefore, pray that an appeal may be allowed and that a transcript of the record and of the proceedings, and papers, evidence and exhibits in said cause, duly authenticated, together with the material exhibits introduced and used as evidence therein, may be sent to the United States Circuit Court of Appeals for the Seventh Circuit.

Dated, this 16th day of May, 1935.

Joseph A. Padway, Attorney for Above Named Defendants.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed May 17, 1935

Now come the defendants and state there is manifest error in the proceedings in this cause and in the rendition of the order for and issuance of a writ of injunction pendente lite entered by the court herein on the 19th day of April, 1935, and assign as errors on appeal,

1. That the court erred in granting the complainant a writ of injunction pendente lite and erred in not denying complainant said injunction.

[fol. 46] 2. That the court erred in finding,

"8. There is in existence no labor dispute between complainant and defendants, or any or either of them."

3. The court erred in failing to find that there was a labor dispute between complainant and defendants, and that such dispute is governed by the provisions of "Title 29, U. S. C. A. Sec. 113, subsections a, b, c, and d thereof."

4. That the court erred in finding those facts set forth in paragraph five of the findings, and particularly that,

"complainant is now ready and willing to permit them to so join, but that said employees have declined and refused to join said labor union; that said defendant labor union was not the union chosen by any of the said employees of the complainant to represent them in any respect with the complainant."

5. That the court erred in finding the facts set forth in paragraph 6 of the findings, particularly that the defendants

"caused false and misleading signs, placards and banners to be placed before the said meat markets of the complainant."

and that the defendants

"have falsely accused the complainant of being unfair to organized labor in its dealings with the said employees."

6. That the court erred in finding,

"That complainant has suffered, and will suffer, irreparable injury from the continuance of the practices of the defendants, and that the customers and prospective customers of the complainant are and will be restrained and intimidated from patronizing said complainant, by reason of the acts of the said defendants."

7. That the court erred in its conclusions of law, to-wit,

"1. That complainant is bound under the terms of 29 U. S. C. A., section 102, as well as sections 268.18 and 268.19, Wis. Stats. of 1933, to permit its employees free agency in the matter of the choice of labor union or organization to act as their representatives.

"2. Complainant is entitled to writ of injunction pendente lite of this court restraining and enjoining the defendants, and each of them, as well as their officers, agents, employees, associates and confederates from doing the acts complained of herein."

8. That the court erred in restraining the defendants by writ of injunction pendente lite from engaging in the following acts:

(a) From "in any wise picketing the premises of the complainant."

[fol. 47] (b) From "advertising, stating or pretending that the complainant, E. G. Shinner & Company, Inc., is in any wise unfair to the said defendants or organized labor generally."

(c) From "in any wise persuading or soliciting any customers or prospective customers of the said complainant to cease patronizing complainant."

9. That the court erred in refusing to permit all competent evidence in support of the answer and cross-complaint of the defendants to the effect that the complainant was guilty of violating Section 7 (a) of the National Industrial Recovery Act, Title 15, Chapter 17 U. S. C. A., and guilty of violating Sections 268.18 to 268.30 inclusive, of the laws of the State of Wisconsin, in that the complainant expressly pleaded reliance on 268.18 of the Wisconsin Statutes as a basis for injunctive relief.

10. That the court erred in refusing to permit all evidence of violations on the part of the complainant of Code No. 540, being a code of fair competition for the retail meat trade approved by the President of the United States, December 21, 1934, under and by virtue of the provisions of the National Industrial Recovery Act, (Title 15, Chapter 17, U. S. C. A.).

11. That the court erred in failing to find that the complainant had violated the National Industrial Recovery Act, Section 7 (a) thereof in the following respects:

(a) That the complainant denied to its employees full freedom of association and self-organization;

(b) That the complainant interfered with free choice of representatives by its employees;

(c) That the defendant pursued a course of conduct designed to prevent self-organization and free choice of representatives by assisting, fostering and promoting a so-called company union.

12. That the court erred in failing to find that complainant was not entitled to the relief prayed for, because the complainant had failed to comply with the obligations imposed upon it by Section 268.18, Wisconsin Statutes of 1933, in the following respects:

(a) That the complainant denied to its employees full freedom of association and self organization;

(b) That the complainant interfered with the free choice of representatives by its employees;

(c) That the defendant pursued a course of conduct designed to prevent self organization and free choice of [fol. 48] representatives by assisting, fostering and promoting a so-called company union.

13. That the court erred in failing to find the complainant was not entitled to the relief prayed for because the complainant had failed to comply with the obligations imposed upon it by Section 102 of Title 29 U. S. C. A. in the following respects:

(a) That the complainant denied to its employees full freedom of association and self organization;

(b) That the complainant interfered with the free choice of representatives by its employees;

(c) That the defendant pursued a course of conduct designed to prevent self organization and free choice of representatives by assisting, fostering and promoting a so-called company union;

14. That the court erred in failing to find that the complainant was not entitled to the relief prayed for because the complainant had failed to comply with the obligation imposed by law upon it to abide by the Code of Fair Competition for the meat industry, known as Code No. 540, Sec. 108, Title 29, U. S. C. A.

15. That the court erred in failing to find that the complainant was not entitled to the relief prayed for because the complainant had failed to make every reasonable effort to settle the dispute of the parties either by negotiation or with the aid of any governmental machinery of mediation or voluntary arbitration as required by Section 108 of Title 29, U. S. C. A.

16. That the court erred in failing to find the specific requirements of the provisions of 29 U. S. C. A. Sec. 107, in the following respects:

(a) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(b) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection;

(c) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained;

(d) That substantial and irreparable injury to complainant's property will follow.

17. That the court erred in issuing a writ of injunction pendente lite against Edward Lauf and against Amalga- [fol. 49] mated Meat Cutters and Butcher Workmen of North America, Local 73, because there is no evidence that Edward Lauf or said union have made any threats or committed any unlawful act, nor had they or either of them knowledge of any such acts.

18. That the court erred in issuing an injunction pendente lite against officers, agents, employees, associates and confederates, there being no evidence that officers, agents, employees, associates and confederates of the defendants committed any unlawful acts, and for the reason that there is no showing that the defendants had any officers, agents, employees, associates and confederates for the purpose of committing illegal or unlawful acts.

19. That the court erred in its exclusion of evidence.

20. That the court erred in its admission of evidence.

Wherefore the defendants pray that the order of the above court of April 19, 1935, directing the issuance of the writ of injunction pendente lite in the above action be reversed and the District Court be directed to enter an order denying a writ of injunction pendente lite.

Joseph A. Padway, Defendants' Attorney.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—Filed May 17, 1935

The defendants having prayed an appeal from the order for an issuance of a writ of injunction pendente lite herein,

It Is Ordered that the appeal so prayed for is hereby allowed and the Clerk of this Court is directed to make return to this appeal in accordance with the rules and practice of the United States Circuit Court of Appeals for the Seventh Circuit.

It Is Further Ordered that the appeal bond to be given [fol. 50] by defendants is hereby fixed at the sum of Two Hundred Fifty ($250.00) Dollars.

Dated, at Milwaukee, Wis., this 17th day of May, 1935.

F. A. Geiger, Judge of the United States District Court for the Eastern District of Wisconsin.

[File endorsement omitted.]

Bond on appeal for $250.00, approved and filed May 17, 1935, omitted in printing.

[fol. 51] IN UNITED STATES DISTRICT COURT

STIPULATION AND ORDER EXTENDING TIME FOR FILING RECORD ON APPEAL—Filed June 14, 1935

To the Honorable F. A. Geiger, Judge of the U. S. District Court, Eastern District of Wisconsin:

It Is Hereby Stipulated by and between the parties to the above entitled action by their attorneys, that the time within

which the appeal heretofore taken in said action may be extended up to the 27th day of June, 1935.

Dated, June 13th, 1935.

Gold & McCann, Attorneys for Complainant. Jos. A. Padway, Attorney for Defendants.

Upon the above and foregoing stipulation, and on motion of Joseph A. Padway, attorney for the defendants above named,

It Is Ordered that the time within which to appeal in the [fol. 52] above entitled action may be and the same hereby is extended up to the 27th day of June, 1935.

F. A. Geiger, Judge.

Dated, June 14th, 1935.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

STIPULATION AND ORDER EXTENDING TIME TO FILE RECORD ON APPEAL—Filed June 25, 1935

To the Honorable F. A. Geiger, Judge of the U. S. District Court, Eastern District of Wisconsin:

It Is Hereby Stipulated by and between the parties to the above entitled action by their attorneys, that the time within which the appeal heretofore taken in said action may be extended up to the 10th day of July, 1935.

Dated, June 25th, 1935.

Joseph A. Padway, Attorney for Defendants. Gold & McCann, Attorneys for Complainant.

Upon the above and foregoing stipulation, and on motion of Joseph A. Padway, attorney for the defendants above named,

It Is Ordered that the time within which to appeal in the above entitled action may be and the same hereby is extended up to the 10th day of July, 1935.

(Signed) F. A. Geiger, Judge.

Dated, June 25th, 1935.

[File endorsement omitted.]

[fol. 53] IN UNITED STATES DISTRICT COURT

PRÆCIPE FOR RECORD—Filed May 17, 1935

To the Clerk of the United States District Court of the Eastern District of Wisconsin:

SIR:

Please prepare the transcript of record and proceedings in the above entitled cause for use on appeal heretofore allowed herein and include in said transcript the following:

1. Bill of complaint.
2. Subpœna in equity.
3. Notice of motion for preliminary injunction.
4. Notice of adjournment for hearing on motion for preliminary injunction.
5. Answer and cross complaint.
6. Findings of fact and conclusions of law.
7. Bond as security for injunction pendente lite.
8. Order for preliminary injunction.
9. Writ of injunction pendente lite.
10. Petition for appeal.
11. Assignment of errors.
12. Order allowing appeal.
13. Defendants' bond on appeal.
14. Citation.
15. Præcipe.
16. Statement of evidence.
17. Order approving statement of evidence.
18. Clerk's certificate.

The foregoing præcipe is hereby approved and it is so ordered.

Dated, at Milwaukee, Wisconsin, this 17th day of May, 1935.

(Signed) F. A. Geiger, District Judge.

[File endorsement omitted.]

[fols. 54-55] Clerk's certificate to foregoing transcript omitted in printing.

Citation, in usual form, showing service on Gold & McCann, filed May 17, 1935, omitted in printing.

[fol. 56] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 57] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 11, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Black took no part in the consideration and decision of this application.

Endorsed on cover: File No. 41,774. U. S. Circuit Court of Appeals, Seventh Circuit. Term No. 293. Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 73, petitioners, vs. E. G. Shinner & Company, Inc. Petition for a writ of certiorari and exhibit thereto. Filed August 7, 1937. Term No. 293, O. T., 1937.